Christopher Scheren

233 E. Erie St, Apt. 1908 | Chicago, IL 60611 | (614) 967-6285 | christopher.scheren@law.northwestern.edu

EDUCATION

Northwestern Pritzker School of Law Chicago, IL
Candidate for Juris Doctor, May 2024
GPA: 3.679 (Dean's List All Semesters)

- NORTHWESTERN UNIVERSITY LAW REVIEW, Executive Editor
  - Note, *Sentence Served and No Place to Go: An Eighth Amendment Analysis of Extended Incarceration for Indigent Sex Offenders*, 118 NW. U. L. REV. (forthcoming 2024)
- Research Assistant, Prof. Erin Delaney (researched literature on decolonization constitutions)
- Julius H. Miner Moot Court Competition, Round 3 Best Speaker & Best Brief Finalist (2023)
- Academic and Professional Excellence Program, Peer Advisor
- Federal Bar Association, Co-Vice President of Programming
- Street Law, Inc., Training and Curriculum Vice President

Miami University Oxford, OH
Bachelor of Arts in Political Science, History, May 2018
GPA: 3.820

- *Cum laude*; Phi Beta Kappa; History Department Honors; Atlee Pomerene Prize
- Miami University Dolibois European Center (MUDEC) (Differdange, Luxembourg)
- Sigma Alpha Mu; MUDEC Student Faculty Council; MUDEC Debate Team

EXPERIENCE

Weil, Gotshal & Manges, New York, NY
Summer Associate, May 2023 – July 2023

Federal Defender Program for the Northern District of Illinois, Chicago, IL
Intern, May 2022 – July 2022

- Researched case law, statutes, and sentencing guidelines to support criminal defense
- Assisted in the drafting of legal memoranda, motions for early termination of supervised release, and sections of appellate briefs
- Reviewed and produced summaries of discovery documents, videos, and photographs

Educational Service Center of Central Ohio, Columbus, OH
Substitute Teacher, October 2020 – June 2021

- Taught lesson plans in public high schools and middle schools
- Monitored student conduct and wrote daily summaries for primary instructors

EF English First, Changchun, China
Foreign Teacher, August 2018 – August 2019

- Taught English as a second language to individual students and larger groups of young learners
- Trained peers and new employees on teaching methods for demonstration lessons and activities

ADDITIONAL INFORMATION

Interests: Travel internationally on a shoestring budget and try locally owned restaurants serving regional cuisines from around the world

Northwestern
PRITZKER SCHOOL OF LAW

UNOFFICIAL GRADE SHEET

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The Northwestern University School of Law permits the use of this grade sheet for unofficial purposes only.
To verify grades and degree, students must request an official transcript produced by the Law School.

Name:	**Christopher Scheren**	Total Earned Credit Hours:	57.000
Matriculation Date:	2021-08-30	Total Transfer Credit Hours:	0.000
Program(s):	Juris Doctor	Cumulative Credit Hours:	57.000
		Cumulative GPA:	3.679

Term	Term GPA	Course	Course Title	Credits	Grade	Professor
2021 Fall	3.595	BUSCOM 510	Contracts	3.000	B+	Nzelibe,Jide Okechuku
		CRIM 520	Criminal Law	3.000	A	Rountree,Meredith Martin
		LAWSTUDY 540	Communication& Legal Reasoning	2.000	A-	Dodier,Grace
		LITARB 530	Civil Procedure	3.000	B+	Clopton,Zachary D.
		PPTYTORT 550	Torts	3.000	A-	Friedman,Ezra
2022 Spring	3.741	BUSCOM 601S	Business Associations	3.000	A-	Kang,Michael S.
		BUSCOM 605B	Contracts II:Complex Comm Cont	3.000	A-	Markell,Bruce Alan
		CONPUB 500	Constitutional Law	3.000	A	Delaney,Erin F.
		LAWSTUDY 541	Communication& Legal Reasoning	2.000	A-	Dodier,Grace
		PPTYTORT 530	Property	3.000	A-	DiCola,Peter Charles
2022 Fall	3.668	BUSCOM 620	Securities Regulation	4.000	A-	Horwich,Allan
		CONPUB 644	Legislation	3.000	B+	Kleinfeld,Joshua Seth
		CRIM 655	Prisons and Prisoners' Rights	3.000	A	Mills,Alan
		LITARB 601	Legal Ethics & Prof'l Resp	3.000	A-	Muchman,Wendy
		LITARB 616	Pre-Trial Advocacy	2.000	A-	Mayer,Michael P
2023 Spring	3.715	CONPUB 650	Federal Jurisdiction	3.000	A-	Pfander,James E
		CRIM 610	Constitutional Crim Procedure	3.000	B+	Rountree,Meredith Martin
		CRIM 620	Criminal Process	3.000	A-	Rountree,Meredith Martin
		LITARB 608	Litigation,Crises & Strat Comm	2.000	A	Loeb,Harlan A.
		LITARB 670	Negotiation	3.000	A	Gandert,Daniel

Run Date: 6/5/2023 Run Time: 10:26:50 AM

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Christopher Scheren for a judicial clerkship. Chris is a bright, dedicated, capable individual who will be a welcome presence in chambers for both his intellect and his good nature.

I first met Chris in his 1L year. He was a student in my Constitutional Law course, a required class in the spring semester. From the outset, it was obvious that he was deeply engaged with the material. His questions in class and office hours were perceptive and on point, and he performed extremely well on a very difficult exam. Rather than a typical issue spotter, I provided a series of more general questions that required close reading and structured responses. His was among a handful of exams at the top of the class. He showed particular strength in wrestling with equal protection doctrine and the tensions between the anti-subordination and anti-classification views of the Fourteenth Amendment.

Recently, I have been fortunate to have Chris serve as my research assistant. I am working on a project exploring calls to decolonize constitutionalism and asked him to do a large-scale literature review on the topic. He read and synthesized dozens of articles from a variety of perspectives (methodological, historical, theoretical) and about many different areas of the world. He then presented a coherent and cogent analysis of the themes in the literature. I often ask RAs to do this kind of work at the beginning of a project, and never have I received a more thorough or nuanced result. In addition, Chris has fielded my follow-up questions with succinct and helpful answers, including pushing back and correcting me when necessary. I feel fortunate for his assistance and advice and have every confidence Chris will be an excellent clerk.

It has been a pleasure to get to know Chris in these different contexts. His contributions at Northwestern also include a variety of community service projects, as well as a substantial commitment to mentoring and supporting the first-year law students through our APEx (Academic and Professional Excellence) program. APEx advisors are chosen through a rigorous and competitive process. They work closely with 1Ls to help them navigate through the academic, professional, and personal challenges of law school. It is a special role that requires approachability, empathy, patience, and very good judgment.

If you have any questions or would like to discuss Chris's candidacy further, please let me know.

Respectfully,

Erin F. Delaney
Professor of Law
Northwestern Pritzker School of Law

Erin Delaney - erin.delaney@law.northwestern.edu - (312) 503-0925

FEDERAL DEFENDER PROGRAM
United States District Court
Northern District of Illinois
55 E. Monroe Street – Suite 2800
Chicago, Illinois 60603

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Letter of Recommendation for Christopher Scheren

Dear Judge Walker:

I had the pleasure of working with Christopher Scheren during the summer of 2022. I am a staff attorney at the Federal Defender Program. Mr. Scheren was an intern with our office. Mr. Scheren was assigned to me full time for 10 weeks, and I worked with him on a daily basis during that time. I had Mr. Scheren work on a number of assignments, and he consistently did an excellent job. The tasks I had him work on varied. Sometimes they were pure legal research projects. Mr. Scheren did well at that. Other times, I gave him complex data to analyze and he came up with sensible conclusions.

I also had him go through discovery materials. I specifically recall a case involving multiple police videos, and Mr. Scheren created summaries which I eventually relied in in successfully challenging a four level enhancement the government had sought under the federal sentencing guidelines. Eventually, I had him writing drafts of writing projects where I needed clear reasoning and good writing. This is not something I delegate to most law students.

Finally, Mr. Scheren assisted me in the preparation of at least one appellate brief. Mr. Scheren did a great job. Looking back on the work I did that summer and some of the filings I submitted, I am not sure exactly which parts of which are Chris' and which are mine, but I do recall that I grew to trust Mr. Scheren's work.

In short, everything I know about Christopher Scheren is positive. He is smart, he works hard, he is easy to get along with, he understands when to ask questions, and he is capable of taking charge of a project when necessary. He will be an excellent attorney very soon, and I would recommend him highly to anyone considering him for anything.

Sincerely,

/s/ Daniel J. Hesler

Daniel J. Hesler
Staff Attorney
(312) 621-8347

NORTHWESTERN PRITZKER SCHOOL OF LAW

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to recommend Christopher Scheren to you. I taught Mr. Scheren criminal law during the Fall of his 1L year. This Spring, he was in both my Constitutional Criminal Procedure class, which surveys the constitutional regulation of the police via the Fourth, Fifth, and Sixth Amendments, and Criminal Process, a doctrinal class covering bail through habeas appeals. He earned an A in Criminal Law, a B+ in Constitutional Criminal Procedure (an exceptionally competitive class), and an A- in Criminal Process.

Without a doubt, Mr. Scheren has a fine academic record, but in my view, it does not adequately capture the outstanding student he is and the outstanding lawyer I expect him to become. Indeed, that his team's brief was a finalist for the Best Brief Award in the Julius H. Miner Moot Court Competition and that his Note was selected for publication by the Northwestern University Law Review better reflect his abilities than a law school exam.

In each class, Mr. Scheren has been a real pleasure to teach. A very hard worker, he was always prepared for class. For me, preparation means not simply reading the assigned pages, but also thinking about the import of the assignment, about how the cases fit within a larger legal and social framework. By the time he came to class, Mr. Scheren was able to engage in a meaningful way with the classroom discussion. He not only gave the right answers to my questions, but he also asked the right questions about the law.

Mr. Scheren also demonstrated the depth of his engagement with the legal issues as he related course material to the real-life situations he saw in his work at the Federal Defender Program for the Northern District of Illinois. His ability to integrate the more abstract legal questions from our class to their real-world application is in my view the best testament to his abilities.

Finally, I would be remiss if I did not comment on how much I have enjoyed working with Mr. Scheren as a person. He is quick to laugh, self-effacing, and welcomes feedback. I believe he would be an outstanding addition to your chambers.

If you have any questions about Mr. Scheren, please do not hesitate to contact me.

Respectfully

Meredith Martin Rountree
Senior Lecturer
Northwestern Pritzker School of Law

Meredith Rountree - meredith.rountree@law.northwestern.edu - (312) 503-0227

CHRISTOPHER SCHEREN

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WRITING SAMPLE

This writing sample is excerpted from a revised draft of the brief I wrote in the 2023 spring semester for the Julius H. Miner Moot Court Competition at Northwestern Pritzker School of Law. I performed all of the research myself and this version has not been edited by anyone else.

The case arises in the Supreme Court of the United States on appeal from the (fictional) Twelfth Circuit Court of Appeals. I represent the petitioner, Mr. Charlie Pace, who appeals both his conviction and his sentencing level calculation under the United States Sentencing Guidelines Manual. The question presented that is addressed in this excerpt is whether a motion to suppress evidence permits a district court to withhold the one level reduction for acceptance of responsibility under Sentencing Guideline § 3E1.1(b).

I have modified the brief's original structure for this excerpt. In its complete form, there is a statement of the case, a summary of the argument, an argument section that addresses the first question presented, an argument section that addresses the second question presented, and a short conclusion. For the purposes of this excerpt, I have only included the argument section that addresses the second question presented. Sections have not been renumbered.

II. THIS COURT SHOULD HOLD THAT A MOTION TO SUPPRESS EVIDENCE DOES NOT PERMIT A DISTRICT COURT TO WITHHOLD THE ADDITIONAL ONE LEVEL REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY UNDER GUIDELINE § 3E1.1(b).

This Court should reverse the Twelfth Circuit's holding that affirmed the district court's withholding of the additional one level reduction under § 3E1.1(b) from Mr. Pace's sentencing offense level. This Court reviews the decision *de novo*. *See United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). Under Sentencing Guideline § 3E1.1(b), a defendant qualifies for an additional one point reduction to his sentencing point total when he qualifies for the two sentencing reduction points under § 3E1.1(a), his offense level is 16 points or higher, and the Government has motioned and stated that the defendant assisted the prosecution by "timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the court to allocate their resources efficiently." U.S. Sent'g Guidelines Manual § 3E1.1(b) (U.S. Sent'g Comm'n 2018) (hereinafter U.S.S.G. § 3E1.1(b)). The commentary to this guideline, which this Court finds authoritative, states that while the Government must motion for the third point, a decision to not move for the additional point can only be premised on an interest that is identified in § 3E1.1(b). *Id.* cmt. 6; *Stinson v. United States*, 508 U.S. 36, 38 (1993) (finding commentary to the sentencing guidelines is authoritative). This results in § 3E1.1(b) being mandatory unless the Government or district court can show that the defendant did not allow the Government to avoid preparing for trial or forced an efficient use of the Government's or court's resources. *See United States v. Divens*, 650 F.3d 343, 346 (4th Cir. 2011). Although a motion to suppress can overlap in content with the substance of a trial, a trial requires additional preparations and preparing for a motion to suppress should not be viewed as synonymous with trial preparations. *See United States v. Marquez*, 337 F.3d 1203, 1212 (10th Cir. 2003). Because the Government admitted they

did no trial preparations beyond preparing for the motion to suppress and Mr. Pace timely pleaded guilty and so did not waste the Government's or the court's resources, this Court should reverse the Twelfth Circuit's holding and rule that a motion to suppress evidence does not permit the district court to withhold the additional one level reduction for acceptance of responsibility under § 3E1.1(b).

A. § 3E1.1(b) is not discretionary, and the one level reduction is mandatory when a defendant satisfies the requirements under § 3E1.1(b).

This Court should rule that a defendant's offense level must be reduced by an additional one level if the defendant meets the requirements listed in § 3E1.1(b). The Government has limited discretion to determine whether a defendant's assistance allowed the it to avoid preparing for trial. *United States v. Divens*, 650 F.3d 343, 346 (4th Cir. 2011). However, once the Government has determined that they were not forced to prepare for trial, the Government must move for the district court to award the defendant the additional one point reduction. *Id.* If upon review of the Government's motion the district court agrees that the Government avoided preparing for trial, then the district court must grant the motion and award the defendant the reduction. *See* U.S.S.G. § 3E1.1 cmt n. 6. Neither the Government nor the district court have the discretion to refuse to award the reduction to a defendant who meets the requirements listed in § 3E1.1(b) and who has allowed the Government to avoid preparing for trial. *See Divens*, 650 F.3d at 346. Because both parties have stipulated that Mr. Pace met the first two requirements listed in § 3E1.1(b) and the Government admitted that it did not prepare for trial outside of opposing the motion to suppress evidence, this Court should reverse the Twelfth Circuit's holding that affirmed Mr. Pace's sentence without the benefit of the additional one level reduction he was entitled to.

1. The plain text and commentary to § 3E1.1(b) shows that the one level reduction is mandatory when the defendant has met the requirements listed in § 3E1.1(b).

This court should rule that the one level reduction under § 3E1.1(b) is not discretionary based on the plain text of the guideline and its commentary. The plain text contains both a discretionary portion (the Government must file a motion) and a mandatory portion (the offense level is decreased if all of the requirements are met). U.S.S.G. § 3E1.1(b); *see also Pace v. United States*, No. 20-1223, at 22 (12th Cir. 2020) (Widmore, J., dissenting). The Government's discretion is limited to interests identified in § 3E1.1(b)'s language. *See Divens*, 650 F.3d at 346. Commentary note 6 to § 3E1.1(b) clarifies what those interests are—"avoid[ing] preparing for trial" and efficiently allocating the Government's and court's resources. U.S.S.G. § 3E1.1 cmt. 6. These interests are satisfied when a defendant timely pleads guilty. *Id.* If a defendant qualified for a reduction under § 3E1.1(a) and his original offense level was at least 16, the additional one level reduction is mandatory unless the Government can justify its denial based on a § 3E1.1(b) interest. *See Divens*, 650 F.3d at 346 ("[O]nce the Government has determined that a defendant has 'tak[en] the steps specified in subsection (b),' he becomes entitled to the reduction.").

The 2003 PROTECT Act added the requirement that the Government must motion for the defendant to receive the additional one level reduction. *United States v. Vargas*, 961 F.3d 566, 574 (2d Cir. 2020). The narrowness of the Government's discretion is made clear by commentary note 6, which explains that the change was made "[b]ecause the Government is in the best position to determine whether the defendant has assisted authorities in a manner that *avoids preparing for trial*." U.S.S.G. § 3E1.1 cmt .6 (emphasis added). Far from granting the Government absolute discretion over a defendant's ability to receive the one level reduction under § 3E1.1(b), it merely shifted the responsibility of determining whether the § 3E1.1(b)

interests had been met from the district court to the Government, which is in a better position to assess their own expenditures of resources. This interpretation underlies the Fourth Circuit's reasoning in *Divens*, which found that the Government's discretion was limited to deciding whether the defendant's actions had relieved the Government from trial preparation. *See Divens*, 650 F.3d at 345–46. If the Government avoided trial preparations, then the defendant was entitled to the third point. *See Id.* at 346.

In this case, it is uncontested that Mr. Pace correctly received a reduction under § 3E1.1(a) and his original offense level was sixteen or higher. *Pace*, No. 20-1223 at 9. In addition, the Government admitted that they did not prepare for trial beyond their preparations for the motion to suppress. *Id.* at 24 (Widmore, J., dissenting). Nevertheless, the Government refused to move for the third point. This Court should follow the plain text of § 3E1.1 and the Fourth Circuit in *Divens* to hold that, unless the Government can show that preparing for a motion to suppress is the same as preparing for trial (this brief will show it cannot), then § 3E1.1(b) is mandatory, the Government should have moved for the additional one level reduction, and the district court cannot withhold it.

2. Amendment 775 is applicable and supports a mandatory reading of § 3E1.1(b).

This Court should rule that § 3E1.1(b) is mandatory under the language of Amendment 775. Amendment 775 states "[t]he Government should not withhold such a motion [for the additional one level reduction] based on interests not identified in § 3E1.1" and if the defendant meets the requirements of § 3E1.1(b), the "the court should grant the motion." U.S.S.G. § 3E1.1 cmt. 6; *Id.* supp. to app. C, amend. 775. This Court should follow the First, Fifth, Sixth, Eighth, and Eleventh Circuits and hold that Amendment 775 is controlling. *See United States v. Adair*, 38 F.4th 341, 360 n.28 (3rd Cir. 2022) (collecting cases). Such a holding would align with this

Court's decision in *Stinson v. United States*, which held that commentary to the Sentencing Guidelines Manual "is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." 508 U.S. 36, 38 (1993). The rule extends to amended commentary, despite it not being reviewed by Congress. *Id.* at 46.

While a review of the circuit courts provides an inconclusive picture of the exact limits on what the Government can consider, this Court should tie those limits to the core intention of § 3E1.1(b)—avoiding trial preparation and preserving the efficient use of the Government's and court's resources. *See United States v. Johnson*, 980 F.3d 1364, 1384 (11th Cir. 2020); *United States v. Rivera-Morales*, 961 F.3d 1 (1st Cir. 2020) ("Quintessentially, section 3E1.1(b) is meant to reward defendants who spare the Government the expense of trial . . . ."). This is reflected in the plain language of the Amendment. Before drafting Amendment 775, the Commission studied the language of the PROTECT Act and found "no congressional intent to allow decisions under § 3E1.1 to be based on interests not identified in § 3E1.1." U.S.S.G. supp. to app. C, amend. 775. On this basis, the text of Amendment 775 clearly states the "government should not withhold such a motion based on interests not identified in § 3E1.1." *Id.* Because Amendment 775 came in light of the PROTECT Act, which emphasizes *trial* resources, this Court should read Amendment 775, and § 3E1.1(b) generally, to limit the Government's discretion when motioning for the additional one level reduction to analyzing whether the defendant has caused the Government to expend trial resources.

The Twelfth Circuit suggested that Amendment 775 did not apply to Mr. Pace's case as the Amendment was limited to resolving a circuit split about whether the Government can withhold a motion for the one level reduction under § 3E1.1(b) because the defendant refused to waive his appellate rights. *Pace*, No. 20-1223 at 13. The court came to this conclusion by reading

Amendment 775 through the substantive canon *expressio unius est alterius*, which allows a court to assume that items not placed on a list were intentionally excluded from it. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). Because the limits on the Government's discretion in Amendment 775 were followed by "such as whether the defendant agrees to waive his or her right to appeal," the Twelfth Circuit opined the Amendment only resolved the specific issue of appellate waivers and was otherwise not applicable. *Pace*, No. 20-1223 at 13. That view, however, ignores this Court's prior holdings that the canon can be overcome by "contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives." *United States v. Vonn*, 535 U.S. 55, 56 (2002). There are clear indications that mentioning appellate rights did not signal any intention by the Commission to limit the Amendment's scope to that particular context. Applying *expressio unius* results in such an extreme narrowing of Amendment 775 that it renders the first half of the sentence ("should not withhold such a motion based on interests not identified in § 3E1.1") surplusage. U.S.S.G. § 3E1.1. supp. to app. C, amend. 775. This violates "the cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant," as it transforms the broad language in the first half of the sentence into a specific order to not consider whether the defendant has signed a waiver of appellate rights. *Kungys v. United States*, 485 U.S. 759, 778 (1988). The Commission made clear that the Amendment should be applied broadly in their "Reasons for Amendment." The Commission stated "[i]n its study of the PROTECT Act, the Commission could discern no congressional intent to allow decisions under § 3E1.1 to be based on interests not identified in § 3E1.1." U.S.S.G. supp. to app. C, amend. 775. This plainly indicates the Commission's intentions for a broad reading of the Amendment, rather than one that constrains it to the limited context of appellate waivers. Both of these reasons provide ample

support for this Court to reject the Twelfth Circuit's use of *expressio unius* and to apply Amendment 775 to this case.

B. A defendant's motion to suppress cannot be the basis for the Government to refuse to motion for the additional one level reduction under § 3E1.1(b).

The core of this appeal is whether the Government or district court can refuse to award a defendant the one level reduction under § 3E1.1(b) because he filed a motion to suppress evidence. Persuasive case law and the plain language of the guideline make it clear that § 3E1.1(b) is designed to prevent the use of trial resources. The case law further suggests that opposing a motion to suppress is distinct from using trial resources. As such, a motion to suppress cannot be the basis on which a defendant is withheld the third sentencing point for acceptance of responsibility under Guideline § 3E1.1(b).

1. Preparing for a motion to suppress is not synonymous with preparing for a trial.

This Court should follow several circuits and hold that preparing for a motion to suppress and preparing for trial are not synonymous with each other. *See, e.g.*, *United States v. Marquez*, 337 F.3d 1203, 1212 (10th Cir. 2003); *United States v. Price*, 409 F.3d 436, 443 (D.C. Cir. 2005); *United States v. Kimple*, 27 F.3d 1409, 1414–15 (9th Cir. 1994); *Vargas*, 961 F.3d at 584. Preparing for trial requires significant work that goes far beyond what is required to oppose a motion to suppress. Even when there is considerable substantive overlap between the two proceedings, "preparation for a motion to suppress would not require the preparation of voir dire questions, opening statements, closing arguments, and proposed jury instructions, to name just a few examples." *Marquez*, 337 F.3d at 1212. This shows that there is simply much more that goes into preparation for trial than preparing for a motion to suppress, even when there is overlap in the content of the two proceedings.

Several circuit courts have identified this within their case law. In *Marquez*, the Tenth Circuit reversed the district court's refusal to award a one level reduction under § 3E1.1(b) because the defendant had "pleaded guilty only after a long suppression hearing that required the attendance of nearly all of the Government's witnesses." *Id.* at 1210. The Tenth Circuit's analysis focused on whether the defendant had pleaded guilty early enough so that the Government did not waste resources preparing for trial. *Id.* at 1212. Despite a "lengthy suppression hearing" that was attended by many of the witnesses who would have been at the trial, the Government admitted that they did not prepare for trial beyond the work done on the motion. *Id.* The Tenth Circuit found this was insufficient basis for the Government to refuse to move for the third point reduction, as trial preparations require additional work than a motion to suppress evidence, even when there is substantive overlap. *Id.* The Tenth Circuit held that

> [W]here a defendant has filed a non-frivolous motion to suppress, and there is no evidence that the Government engaged in preparation beyond that which was required for the motion, a district court may not rely on the fact that the defendant filed a motion to suppress requiring a "lengthy suppression hearing" to justify a denial of the third level reduction under § 3E1.1(b)(2).

Id.

In Mr. Pace's case, the Twelfth Circuit disagreed and held that the Government can choose to not move for the one level reduction under § 3E1.1(b) because it used resources to oppose Mr. Pace's motion to suppress. In support, the court cited to the Fifth and Second Circuits. Recent decisions in both of those circuits cast doubt on that position. While the Twelfth Circuit accurately pointed to the Fifth Circuit's long history of support, the Fifth Circuit recently indicated they would have considered deciding differently if not constrained by *stare decisis*. *See United States v. Longoria*, 958 F.3d 372, 376 (5th Cir. 2020) ("If we were writing on a blank slate, Longoria might have a compelling argument."). The Second Circuit has moved even

further from the position. Both the Twelfth Circuit in Mr. Pace's case and the Fifth Circuit in *Longoria* cite to *United States v. Rogers*, in which the Second Circuit ruled a district court could refuse to grant the one level reduction when "in terms of preparation by the Government and the investment of judicial time, the suppression hearing was the main proceeding in [the] case." 129 F.3d 76, 80 (2nd Cir. 1997). However, although it did not address *Rogers*, the Second Circuit recently explicitly adopted the Tenth Circuit's position in *Marquez* and ruled that a district court cannot deny the one level reduction under § 3E1.1(b) when the Government did not prepare for trial beyond a motion to suppress. *United States v. Vargas*, 961 F.3d 566, 584 (2nd Cir. 2020).

The *Marquez* decision is analogous to Mr. Pace's case and Mr. Pace is entitled to the third level reduction. Like the defendant in *Marquez*, Mr. Pace filed a non-frivolous motion to suppress that overlapped with evidence that would have been presented at trial. Despite the overlapping content, the Government in both *Marquez* and Mr. Pace's case admitted that it did not prepare for trial beyond the work done on the motion. Because a motion to suppress is not in and of itself equal to trial preparation, the Government has not shown that it prepared for trial. Therefore, since § 3E1.1(b) is designed to reward defendants who specifically allow the Government to avoid preparing for trial, Mr. Pace is entitled to the third point on the same grounds as the defendant in *Marquez*.

2. Mr. Pace's actions were not inefficient uses of the Government or the court's resources.

Mr. Pace timely notified the Government of his intention to plead guilty and did not cause an inefficient use of resources by either the Government or the court. What constitutes timely notice is not measured by days, weeks, or hours, but by how they functionally relate to the objectives of § 3E1.1(b). *See Kimple*, 27 F.3d at 1412. As such, a timely notice will ensure the

goals of the provision are realized, specifically that the defendant pleaded guilty early enough so that the Government avoided preparing for trial and both the Government and court were able to allocate their resources efficiently. *See Id.*; § 3E1.1. Efficient use of resources by the Government has a long history of being tied to whether it had to prepare for trial, an interpretation supported by the plain language of § 3E1.1(b). *See Kimple*, 27 F.3d at 1412; *United States v. Lee*, 653 F.3d 170, 174 (2d Cir. 2011).

Because the Government has admitted that it did not prepare for trial beyond the motion to suppress, and this brief has shown opposing a motion to suppress is not to be considered "trial preparation," the focus is on whether Mr. Pace allowed the court to allocate their resources efficiently. The text of commentary note 6 to § 3E1.1 indicates that the efficient use of court resources refers to scheduling decisions surrounding trial. U.S.S.G. § 3E1.1 cmt. 6. Because Government resources and court resources are part of the same phrase in that note, there is little indication that they are intended to refer to significantly different concepts. Additionally, commentary note 6 states "to qualify under subsection (b), the defendant must have notified authorities of his intention to enter a plea of guilty at a sufficiently early point in the process so that… the court may schedule its calendar efficiently." *Id.* While a defendant cannot wait until the eve of trial to plead guilty, "where the proceeding is at the pretrial stage and the district court has not yet expended its resources, the guilty plea may still be timely." *Kimple*, 27 F.3d at 1413, 1415. Because Mr. Pace was nine days from his trial date and the case was still within the pretrial stage, the district court cannot be assumed to have expended trial resources before Mr. Pace pleaded guilty. Therefore, Mr. Pace's guilty plea was timely and was not an inefficient use of the Government's or the court's resources.

Applicant Details

First Name	**Nathan**
Middle Initial	**T**
Last Name	**Schneider**
Citizenship Status	**U. S. Citizen**
Email Address	**nschneider427@gmail.com**
Address	**Address** Street **1910 19th St.** City **Heyburn** State/Territory **Idaho** Zip **83336** Country **United States**
Contact Phone Number	**2082192396**

Applicant Education

BA/BS From	**Boise State University**
Date of BA/BS	**May 2018**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 19, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Georgetown Immigration Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Augarten, Ian
ian.augarten@maryland.gov
(571) 882-1859
Schoenholtz, Andrew
schoenha@georgetown.edu
202-662-9929
Smith, Paul
paul.smith@law.georgetown.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Nathan Schneider
425 L St. NW
Washington DC, 20001

Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am writing to apply for a 2024-2025 clerkship with your chambers. I am currently a rising 2L at the Georgetown University Law Center. I have a strong interest in litigation, and hope to further hone my skills and assist your chambers through this position. I have visited Virginia many times during law school, and love the history and culture of the state.

Growing up watching my father, a public defender, I knew I wanted a role advocating for clients in the courtroom. As an aspiring litigator with experience in a variety of courtroom contexts, both state and federal, I believe I would make a strong addition to your chambers. Through my clinic and summer work, I have been fortunate to have experience several practice areas, including state juvenile criminal proceedings, immigration proceedings, and high value civil disputes in federal district court. In addition to my experience as an advocate, my time in Georgetown has also honed my writing skills through my experience in the classroom, and as a managing editor of the Georgetown Immigration Law Journal.

My resume, unofficial transcript, and writing sample are submitted with this application. Georgetown will submit my recommendations from Professors Paul Smith and Andrew Schoenholtz, as well as from my former supervisor, Ian Augarten from the Prince George's County public defender's office. I would welcome the opportunity to interview with you and look forward to hearing from you soon.

Respectfully,

Nathan Schneider

NATHAN SCHNEIDER

120 F St NW, Washington, DC 20001 • (208) 219-2396 • nts21@georgetown.edu

EDUCATION

Georgetown University Law Center — **Washington, DC**
Juris Doctor Candidate — Expected May 2024
GPA: 3.59
Honors: May Ferro Family Endowed Opportunity Scholarship
Journal: Georgetown Immigration Law Journal, *Managing Editor*
Activities: Human Rights Law Associate Program, Cancer Law Pro Bono project

Boise State University — **Boise, ID**
Bachelor of Arts, *cum laude*, History and Secondary Education, Minor Political Science — May 2018
GPA: 3.73
Honors: Helen K. McCarthy Memorial Scholarship, Frances Woods Education Award
Activities: Lambda Chi Alpha Fraternity: Secretary, Peace Corps Prep Program, Study Abroad: Aberystwyth, Wales
Thesis: *An Overview of British Racial Rhetoric in the Second Anglo Boer War*

EXPERIENCE

Milbank LLP — **New York, NY**
Summer Associate, Litigation Track — May 2023- July 2023 (Expected)

- Supported trial preparation efforts in the litigation department through extensive research on Westlaw into state and federal matters,
- Observed trials in the Southern District of New York and took detailed notes to

CALS Asylum Clinic — **Washington, DC**
Student Attorney — August 2022- December 2022

- Successfully defended a client seeking asylum by appearing before the Immigration Court
- Conducted extensive country conditions research, interviewed witnesses, and coordinated expert testimony
- Wrote motions and briefs

Prince George's County Office of the Public Defender: Juvenile Division — **Upper Marlboro, MD**
Law Clerk — May 2022- August 2022

- Conducted legal research and investigations for attorneys
- Wrote motions which were submitted to the court
- Interviewed clients and reviewed discovery to gather evidence for trial

Peace Corps Benin — **Toura and Gbanlin, Benin**
English Teaching Volunteer — June 2018 – March 2020

- Served as a full time Teach English as a Foreign Language (TEFL) teacher instructing students on the use and conventions of the English Language
- Collaborated with Beninese counterparts to plan lessons and improve each other's English teaching skills
- Organized youth development events including a regional English spelling bee and national boy's summer camp

Ada County School District — **Boise, ID**
Student Teacher — Jan. 2017 – May 2018

- Under supervision, served as a classroom teacher in Government and History Classes
- Designed lesson plans to fulfill state and federal education requirements

Languages and Interests

- French (African dialects: proficient; European dialects: intermediate), Bariba (Novice), Fon (Novice)
- Hiking, running, vinyl record collecting, history (American, European, African)

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Nathan T. Schneider
GUID: 840770006

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	92	Civil Procedure David Hyman	4.00	B+	13.32	
LAWJ	002	92	Contracts Girardeau Spann	4.00	B+	13.32	
LAWJ	005	23	Legal Practice: Writing and Analysis Sara Creighton	2.00	IP	0.00	
LAWJ	008	22	Torts Mary DeRosa	4.00	B+	13.32	

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	39.96	3.33
Cumulative	12.00	12.00	39.96	3.33

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	003	21	Criminal Justice Julie O'Sullivan	4.00	B+	13.32	
LAWJ	004	21	Constitutional Law I: The Federal System Cliff Sloan	3.00	A-	11.01	
LAWJ	005	23	Legal Practice: Writing and Analysis Sara Creighton	4.00	B+	13.32	
LAWJ	007	92	Property Audrey McFarlane	4.00	A	16.00	
LAWJ	235	50	International Law I: Introduction to International Law David Koplow	3.00	A-	11.01	
LAWJ	611	07	Communication Design & Law: Re-Designing Legal Information Jacklynn Pham	1.00	P	0.00	

	EHrs	QHrs	QPts	GPA
Current	19.00	18.00	64.66	3.59
Annual	31.00	30.00	104.62	3.49
Cumulative	31.00	30.00	104.62	3.49

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	215	05	Constitutional Law II: Individual Rights and Liberties Brad Snyder	4.00	A-	14.68	
LAWJ	500	06	Center for Applied Legal Studies Andrew Schoenholtz		NG		
LAWJ	500	30	~Legal Drafting Andrew Schoenholtz		A-		
LAWJ	500	81	~Advocacy Andrew Schoenholtz	4.00	A-	14.68	
LAWJ	500	82	~~Classroom Work Andrew Schoenholtz	3.00	A-	11.01	
LAWJ	500	83	~~Clinical Skills Andrew Schoenholtz	3.00	B+	9.99	

----------Continued on Next Column----------

	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	50.36	3.60
Cumulative	45.00	44.00	154.98	3.52

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	1454	05	Topics in LGBT Civil Rights Seminar	3.00	A	12.00	
LAWJ	165	07	Evidence	4.00	A	16.00	
LAWJ	1832	08	Introduction to Foreign Intelligence Law	2.00	A-	7.34	
LAWJ	361	07	Professional Responsibility	2.00	B+	6.66	
LAWJ	545	08	Financial Restructuring and Bankruptcy	4.00	A-	14.68	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	56.68	3.78
Annual	29.00	29.00	107.04	3.69
Cumulative	60.00	59.00	211.66	3.59

End of Juris Doctor Record

Natasha Dartigue
Public Defender

Keith Lotridge
deputy Public Defender

Melissa Pryce
District Public Defender
Prince George's County

Georgetown University Law Center
600 New Jersey Ave NW
Washington, DC 20001

Re: Letter of Recommendation for Nathan Schneider

To whom it may concern:

I am writing this letter of recommendation in support of Nathan Schneider's application for a judicial clerkship. Nathan was a law clerk with the Maryland Office of the Public Defender in Prince George's County during the summer of 2022. He was assigned to our juvenile division, and I was his supervisor. I found Nathan to be a highly dedicated and thorough law clerk during his time with our office.

Nathan worked on a number of challenging cases within our office. In one case, a young boy was charged with a felony assault on a small girl. There were numerous questions as to the identification of the youth as the perpetrator in the case. In preparing for trial, Nathan wrote a motion in limine regarding the presence of certain witnesses in the courtroom during testimony, to avoid prejudice against our client. The motion was legally well researched and written, but also helped promote the theory of our client's innocence at the opening of the case. Nathan was part of the trial team in preparing various cross-examinations and arguments and we were ultimately successful at trial.

Nathan also worked on a homicide case with a seventeen-year-old defendant. Under Maryland law, a seventeen-year-old charged with homicide is not eligible to be transferred to juvenile court. Nathan worked on a motion challenging of the constitutionality of that provision. He did in-depth research into the legislative history of the law and the historical context of its development, including going to the State Archives in Annapolis to obtain documents not otherwise available. He helped draft an extensive motion incorporating that research. While the motion was not successful, it will be litigated on appeal and possibly create new law in the State of Maryland if successful.

Nathan was a valued member of our defense team when he worked as a law clerk. He collaborated professionally with attorneys, was reliable with his assignments, and wrote clearly and concisely. I believe he would be an excellent contributor to any judge's chambers and would take advantage of the opportunity to continue learning and growing as an attorney,

Office of the Public Defender, 14735 Main Street, Suite 272B Courthouse, Upper Marlboro, MD 20772
p. 301.952.2159 f. 301.952.9078 toll free 1.877.430.5187

Sincerely,

Ian Augarten (1306190009)
Assistant Public Defender
14735 Main St.,
Upper Marlboro, MD 20772
(301) 952-2106
ian.augarten@maryland.gov

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Nathan Schneider for a Clerk position within your chambers. I worked very closely with Nathan as his principal advisor during his time in the Center for Applied Legal Studies (CALS) asylum clinic at Georgetown Law.

Our intensive ten-credit asylum clinic is extremely selective, as dozens of students apply for only twelve seats each semester. The clinic requires teamwork, strategic thinking, and the rapid mastery of both complicated facts and the nuances of immigration law. CALS students represent refugees seeking asylum in the United States. Students assume primary responsibility for representing these refugees, working in pairs to prepare one full asylum case from beginning to end in one semester. Students interview the client; research the human rights record of the country of origin; develop documentary and testimonial records showing the client either suffered past persecution or will suffer future persecution if forced to return; locate and prepare witnesses; and represent the client at a hearing before an asylum officer or a federal immigration judge.

Over the course of the semester, I carefully reviewed and commented on all the documents that Nathan and his partner produced during the process of successfully convincing an Immigration Judge in a deportation hearing that their client merited asylum in the United States. This work included preparing motions, witness affidavits, administrative filings, and a brief with an extensive annotated table of contents highlighting the corroboration. In addition to the written body of work, the clinic included oral advocacy sessions where Nathan and his partner interviewed their client and witnesses, conducted a moot, and ultimately argued their case before an Immigration Judge.

One of the things that stood out to me about Nathan was his commitment to learning and his eagerness to grow as an advocate. Through our weekly case team meetings, I saw him build an understanding of a new area of law with diligence and curiosity, and through revision and hard work, put together a compelling, informative, and legally nuanced brief. While developing the theory of the case, Nathan researched and reviewed dozens of 4th Circuit and Board of Immigration Appeals decisions to determine the most favorable approach for his client. Through this process, Nathan and his partner carefully weighed the strengths and weaknesses of the available precedent. For example, Nathan applied the relevant case law on major elements of asylum, including persecution and imputed political opinion, to the factual record that he and his partner thoughtfully developed. Working from the factual record at hand, Nathan advanced his client's strongest claims, and identified significant challenges likely to be raised by the Homeland Security trial attorney and wove counter arguments into the brief to undermine them.

Nathan's factual research involved a number of important sources. While significant information came directly from interviews with his client, he also reached out to numerous witnesses abroad in different countries, as well as solicited testimony from experts. Nathan supplemented this research with reports about the human rights conditions in the client's home country. To do this, Nathan read many human rights reports from across the world and carefully corroborated his client's claims with secondary sources, all meticulously cataloged and highlighted for the Immigration Judge in an annotated table of contents. Nathan and his partner ultimately culled their extensive research into their client's claims to some 600 pages of corroboration submitted as evidence to the court.

In preparing for litigation, Nathan effectively evaluated the potential avenues that the attorney for the Department of Homeland Security might employ to challenge the asylum claim and prepared legal and factual arguments to counter them. For example, Nathan prepared an exhaustive list of potential bars for asylum which the government might argue, and the legal and factual responses against those arguments. This preparation paid off when the government attorney pressed their client about the one of the greatest points of concern our team had identified in practice and discussion. Nathan's extensive knowledge of the record showed during the trial when he was able to quickly respond to cross examination by the opposing counsel, and effectively and respectfully answer questions from the judge.

While working closely with Nathan, I appreciated his dedication and passion to the project, as well as his receptiveness to suggestions for improvement, his ability to work closely with other student advocates, and his commitment to professionalism and discretion while dealing with sensitive topics. Given the skill and knowledge I have seen in CALS, I have no doubt that Nathan will make a significant contribution as a clerk in your chambers, and I am happy to recommend him for a clerk position in your chambers.

Sincerely,

Andrew Schoenholtz, J.D., Ph.D.
Director, Center for Applied Legal Studies
Director, Human Rights Institute

Andrew Schoenholtz - schoenha@georgetown.edu - 202-662-9929

Andrew Schoenholtz - schoenha@georgetown.edu - 202-662-9929

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Nathan Schneider, of the Georgetown Law Class of 2024, as a candidate for a clerkship in your chambers. Nathan is both a strong candidate intellectually and an incredibly nice person who would fit in well as a judicial law clerk.

I got to know Nathan this past semester when he took my Georgetown seminar, Topics in LGBT Civil Rights. He was an insightful participant in the class discussion, bringing to it his life experience growing up in Idaho and attending Boise State University before spending two years as a Peace Corps volunteer in Benin. I have just graded his end-of-semester paper for the class, which is truly excellent. Nathan had spent the prior semester working with one of our clinical programs – the immigration asylum clinic run by the Center for Applied Legal Studies. In that role, he litigated asylum claims. He then brought that experience to bear in writing a seminar paper discussing the problems with the current standards governing asylum applications based on claims of anti-LGBT discrimination in the home country. The result was a well-written analysis supporting the need for a more explicit authorization of claims in this category.

A son of the Mountain West, Nathan is looking for a clerkship in that region. He has enjoyed the broadening experiences of Peace Corps service and doing law school In Washington, DC but is drawn to return to his native part of the country.

As a former teacher, Nathan is a natural communicator who explains complex concepts in a clear and succinct manner – a skill that will serve him well in his future legal endeavors. He has compiled an already-excellent GPA through three semesters of law school and seems to be on an upward trajectory. I can say with great confidence that he would serve you well.

I would be happy to talk further with you about Nathan as a clerkship candidate. I can be reached at paul.smith@georgetown.edu or 202 258-5669.

Sincerely,

Paul M. Smith

Nathan Schneider
425 F st., 20001
Washington, DC
Nts21@georgetown.edu
208-219-2396

Writing Sample

This is a paper I wrote for the class "Topics in LGBT Civil Rights". This paper also served as my note requirement for my journal, the Georgetown Immigration Law Journal. Working in my clinic, I noticed how the restrictive rules on Particular Social Group claims impact potential asylees, and I wanted to explore how some of the potential solutions could impact different groups of people, particularly the LGBT community.

The Sixth Ground: Why Adding Gender/Sexuality to the Grounds for Asylum Would Better Serve the Needs of LGBT Asylum Seekers

Nathan Schneider

Topics in LGBT Civil Rights

May 15, 2023

Contents

Introduction

On February 4, 2021, President Biden issued a memorandum affirming the United States's support for the LGBT community, and issued a series of directives to the executive branch to support the interests of LGBT people around the world.[1] One of the provisions of this memorandum directed the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to use their respective powers in asylum law to support LGBT asylees seeking refuge in the United States.[2] Despite these recent efforts by the Biden Administration, however, there is still a great amount of work needed, and the current asylum system set out by the 1951 Convention on Refugees is inadequate to do the job. LGBT asylum seekers, as well as asylum seekers facing discrimination for gendered violence, face unique problems in applying for refuge. Global norms of homophobia and sexism mean individuals in these groups are not protected from persecution in much of the world, even in locations that are considered secure and that are not traditional sources of refugees.[3] These problems exist, in no small part, because the global asylum system was developed to address specific problems arising out of WWII and the Cold War, and well before our modern understanding of gender and sexuality.

This paper will argue that the existing protected grounds for asylum that recognized by international law do not meet the needs of LGBT asylum seekers, and that instead the addition of a sixth ground for asylum based on gender/sexual orientation better serves their needs. While asylum claims based on gender and sexuality remain funneled into the "Particular Social Group" (PSG) framework, LGBT asylum seekers will be forced to make their claims under a framework

[1] Memorandum For The Heads Of Executive Departments And Agencies, THE WHITE HOUSE (Feb. 4, 2021) https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-advancing-the-human-rights-of-lesbian-gay-bisexual-transgender-queer-and-intersex-persons-around-the-world/.
[2] *Id*.
[3] Round Table, UNHCR, LGBTIQ+ Persons In Forced Displacement And Statelessness: Protection And Solutions, 4 (June 4, 2021).

not designed for their needs.[4] Furthermore, homophobia in the asylum process leads immigration officials to interpret the ambiguous, existing laws in ways that cut against LGBT asylees. A new grounds for asylum that are better tailored to meet their needs.

Part I will demonstrate that the PSG ground is insufficient for protecting LGBT asylees due to its ambiguous inception, and especially given how American courts have interpreted the standard. Part II will go a level deeper and argue that LGBT asylees continue to face significant legal barriers because of the PSG ground. Instead, a sixth ground for asylum would better address many of those concerns. Part III will take a humanitarian perspective to show how a sixth ground would support fairness for asylees undergoing the asylum process and reduce their suffering and stress through the process. Finally, Part IV will briefly explain how a sixth ground would bring the United States more in line with the rest of the world's practical application of refugee law.

I. Global Asylum Law and Particular Social Group as a Grounds for Asylum.

LGBT individuals seeking asylum in the United States today are forced to make their case using a legal standard that was developed over seventy years ago and that has been stripped down by United States courts. Following the Second World War, in 1967, the United Nations (UN) created the current global norms for refugees through the Convention Relating to the Status of Refugees.[5] This multilateral treaty formed the basis for asylum law around the world and enshrined five specific grounds for asylum. One addition, the Particular Social Group, became somewhat of a catch-all for groups for asylees who did not conform to the other groups.

[4] Michael Kareff, *Constructing Sexuality and Gender Identity for Asylum through a Western Gaze: The Oversimplification of Global Sexual and Gender Variation and Its Practical Effect on LGBT Asylum Determinations*, 35 GEO. IMMIGR. L.J. 615, 618 (2021). Kareff argues that the PSG grounds show a fundamental misunderstanding of LGBT culture and queer theory, forcing asylees to conform to a particular vision of queerness to seek asylum and minimizing the lived experiences of asylees.

[5] UNHCR, The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, 1 (2011).

Though this flexibility can sometimes be helpful for asylum-seekers, the PSG category was defined in a vague manner that led to serious questions over who should be considered a refugee. Over the past decades, the United States has tackled this problem through numerous common law decisions by both the Bureau of Immigration Affairs (BIA) and Article III courts. The United States has ultimately built on top of the vague UN standard a comparatively restrictive definition of Particular Social Group that insufficiently protects LGBT asylees.

A. The 1951 Refugee Convention created the Particular Social Group grounds as a flexible but ambiguous tool for refugees.

Many of the issues in asylum law today stem from the limited scope and original purpose of the Refugee Convention of 1951. In the wake of the Holocaust, the Allied powers agreed to provide a system for safety and refuge for those facing discrimination in their home countries.[6] The newly formed United Nations took charge of the initiative to create the asylum system, culminating in the Convention Relating to the Status of Refugees in 1951.[7] This convention sought to create a unified, international approach to the global asylum process.[8]

While it was a crucial step in establishing international norms about the treatment of refugees, the Refugee Convention was limited by the historical context of its creation. The convention defined a refugee as a person who:

> As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[9]

[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] The Refugee Convention, 1951, 189 UNTS 137 (1951).

The first clause proved a major weakness of the system as new, pressing humanitarian crises surfaced in the Cold War Era. Recognizing that the Refugee Convention was created and ratified with the explicit intention of handling the global crisis created by the Second World War,[10] and in order to address future crises, the 1967 Protocol amended the treaty and removed the first clause to form the current, global refugee regime.[11] This framework has been adopted by countries around the world, and many nations have domestic legal standards that conform to the language of the Refugee Convention.[12]

However, defining the edges of the PSG designation has proven a problem since its creation. Discrimination based on race, religion, nationality, and political opinion is often easy to identify, but claims that do not conform to these grounds present grave dangers to potential asylees. Because the needs of asylees often do not fit into one of the four neat boxes provided by the treaty, Particular Social Group (PSG) tends to be the catch-all grounds for many people seeking asylum with claims that do not conform to more directly enumerated grounds.[13] The standards for a particular social group are ill-defined, and many radically different groups have claimed asylum under these grounds. These include former gang members,[14] members of clan

[10] UNHCR, The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, 1 (2011).
[11] Protocol Relating to the Status of Refugees, 1967, 189 UNTS 150.
[12] *See, e.g.*, Immigration and Refugee Board of Canada, *Claim Refugee Status From Inside Canada: Who Can Apply?* (Mar. 28, 2023) https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/eligibility.html; UK Parliament, *Refugees and Asylum-Seekers: UK Policy* (Dec 1, 2022) https://lordslibrary.parliament.uk/refugees-and-asylum-seekers-uk-policy/; French Office of Protection of Refugees and Displaced People, GLOSSAIRE (last visited Apr. 2, 2023) https://www.ofpra.gouv.fr/glossaire/r#538.
[13] *See* Department of Homeland Security, *Roundtable 2: Hot Topics in Asylum: An Examination of Particular Social Group and Other Serious Harm* (Sept. 10, 2020) (including discussions by government attorneys on some of the problems related to using the PSG grounds).
[14] *See, e.g.*, *Benitez Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009).

groups,[15] and women who have been abused by their partners.[16] It is also the standard grounds for asylum for LGBT asylum seekers around the world.[17]

Despite how widely it may apply, the PSG ground remains ill-defined and malleable due to its inclusion as an afterthought in the Refugee Convention. Initial drafts of the UN Convention on Refugees contained only the first four grounds for asylum: race, religion, national origin, and political opinion.[18] At the suggestion of the Swedish representative to the convention, the committee added PSG as the fifth grounds for asylum.[19] The record is unclear on what the drafters intended when they included the grounds, as there was no debate on its inclusion, and the committee agreed upon the amendment unanimously.[20] Furthermore, the amendment has no drafter's notes or comments on its inclusion. Thus, scholars can only hypothesize the original intent of the provision,[21] leaving much up for interpretation by courts.

Given the context of the Holocaust, it is reasonable to assume that the framers of the convention intended the PSG ground as a catch-all for the other groups that were persecuted by the Nazis, such as Romani, prisoners of war, and the mentally and physically disabled. Indeed, given the Nazis' persecution of members of the LGBT community, considering members of the LGBT community a particular social group appears to be consistent with the original meaning of the PSG designation.[22] But without drafter's notes, comments, or recorded debate, the intention

[15] *See, e.g., In Re H-*, 21 I. & N. Dec. 337, 337 (BIA 1996).
[16] *See, e.g., Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (BIA 2014).
[17] *See* UNHCR Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 2, HCR/GIP/02/01 (May 7, 2002).
[18] Natalie Nanasi, *Death of the Particular Social Group*, 45 N.Y.U. Rev. L. & Soc. Change 260, 282 (2021).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *See* United States Holocaust Museum, *Nazi Persecution Of Homosexuals* (last visited Apr. 2, 2023) https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/nazi-persecution-of-homosexuals (detailing just some of the persecution that members of the LGBT community faced in the Nazi regime).

behind the text of the Convention remains ambiguous. As a result, courts in the United States have been able to interpret the PSG grounds more narrowly.

B. Because of the ambiguity of the PSG status, common law in the United States has interpreted the grounds in a restrictive manner.

United States courts have interpreted the PSG grounds in a limited manner based on the requirements of immutability and visibility. The PSG grounds is primarily understood through the judicial decision in *Matter of Acosta*,[23] as there is no statute or legislative guideline which lays out what is and is not a PSG.[24] In *Acosta*, the BIA held that "persecution on account of membership in a particular social group [means] persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic."[25] Furthermore, the court held that membership in the group is something that the asylee cannot or should not change—thus setting the standard for immutability.[26] The contours of the law depend on the circuit where the asylee is applying for relief, as rulings in different circuits can often have profound impacts on whether or not someone is granted asylum.

One of the key questions from the *Acosta* standard regards the definition of an "immutable characteristic." The case itself sheds some light on the idea. The BIA denied asylum to a Salvadoran man who was a member of a taxi service collective being targeted by the government, finding his occupation was not immutable, because his job title was within his power to change.[27] Edge cases regarding issues such as domestic violence and gang membership

[23] *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).
[24] *See* S.Rept 96-256; S.Rept 96-590. The Refugee Act of 1980 is the primary legislative source for refugee law, but it does not dive into the definition of the Particular Social Group, despite naming it as one of the grounds for asylum.
[25] *Id.* at 213.
[26] *Id.*
[27] *Id.* at 212.

show significant unresolved circuit splits about the edges of the standard.[28] While there are a few areas where there are well-defined boundaries (family groups are usually considered immutable,[29] whereas employment is not[30]) there is significant room for interpretation when deciding "immutability."

The *Acosta* standard alone defined PSG until 2006, when the BIA added "social distinction" to the PSG analysis and thus created the visibility requirement in *In Re C-A-*.[31] In addition to the *Acosta* factors, an asylee must be a member of a community that is "recognizable" as a discrete group by others in the society, and which must have well-defined boundaries.[32] Yet many of the groups that asylees identify with are concealed from society due to persecution—persecution being the very reason why they may be seeking asylum. Judge Posner, writing for the Seventh Circuit, concluded that the "social visibility requirement makes no sense" and rejected it as an element for PSGs.[33] He reasoned that "a homosexual in a homophobic society will pass as heterosexual. If you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible."[34] While the BIA later clarified that groups do not need to meet the requirements for ocular visibility, the standard still requires that the community as a whole recognize the social group as separate from the rest of society.[35] In practice, that means that immigration lawyers

[28] *Compare De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020), *with Gonzales-Veliz v. Barr*, 938 F.3d 219 (5th Cir. 2019). Both cases were issued during AG Sessions's injunction on domestic violence-based asylum claims. In the First Circuit, they disregarded the AG's decisions and set a near per se rule allowing gender-based claims. On the other hand, the Fifth Circuit rigidly applied *Matter of A-B-*, a decision that will be discussed at some length later in the paper.
[29] *See, e.g.*, *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009). *But see Matter of L-E-A-* (where family was not considered a sufficient grounds, showing that even the exemplar of the PSG category can be insufficient).
[30] *See Acosta*, 19 I. & N. Dec. 211.
[31] *In Re C-A-*, 23 I. & N. Dec. 951, 951 (BIA 2006).
[32] *Id.*
[33] *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009).
[34] *Id.*
[35] *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 227 (BIA 2014).

suggest that clients highlight times they have been recognized in the community to provide the basis of their claim to ensure immigration judges can recognize visibility.[36] The United States' additional requirements for the PSG ground have made immigration difficult for many groups, but U.S. case law is troubling for LGBT asylees in particular for the reasons expanded on below.

II. LGBT Asylum Seekers Face a Multitude of Legal Barriers to Relief Which Could be Mitigated or Removed Through the Addition of Another Ground for Asylum.

LGBT asylum seekers face problems that differ from those faced by other refugees. Some of these difficulties come from requiring members of the LGBT community to fit their claims into the PSG analysis, whereas others are compounded by homophobia in American society at large. Not only is the basis of LGBT asylum law shaky at best, but developments in PSG designation independent of LGBT claims have also made life more difficult for asylees. In addition, recent decisions by the Trump Administration have set dangerous precedents for LGBT claimants. While adopting a sixth ground for asylum would not solve all these problems, it would go a long way towards ensuring that immigration judges and advocates would have the tools to handle these challenges.

A. The PSG analysis is flawed as a basis for LGBT claims, as Matter of Toboso-Alfonso *as a precedent is outdated and insufficient.*

In the United States, gays, lesbians, and bisexuals have been considered a cognizable group in PSG claims since *Matter of Toboso-Alfonso*.[37] In this 1990 decision, the BIA reviewed the withholding of removal claim of a man who had escaped Cuba following incarceration for suspicion that he was gay.[38] The BIA affirmed the lower court's decision granting a withholding

[36] *See* Immigration Equality, *Challenging Asylum Cases* (last visited April 2, 2023).
[37] *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (BIA 1990).
[38] *Id.* at 819.

of removal based on the finding that homosexual identity represented a cognizable social group and was therefore proper grounds for asylum.[39] The Ninth Circuit held in 2000 that transgender status similarly constituted a PSG, and this rule has broadly been followed outside of that circuit.[40]

While this was a landmark case for LGBT asylum seekers, the holding is rooted in the landscape of LGBT rights in the United States at the time, and serves as a problematic ground for relief because of its reliance on the conduct/identity distinction.[41] Since Cuba was persecuting homosexuals on the basis of their *identity*, rather than enforcing a law that was based on health measures banning sodomy or same sex *conduct*, Cuba's treatment of the asylee was deemed impermissible.[42] At the time, *Bowers v. Hardwick*, which explicitly condoned sodomy laws focused on homosexual conduct in the U.S., was controlling. This decision by the BIA thus avoided challenging *Bowers* by playing into the conduct/identity distinction.[43]

However, in the modern day, the decision leaves a large hole with potential for abuse by homophobic immigration judges. All but one of the top five points of origin for LGBT asylum seekers currently has laws that explicitly ban homosexual conduct.[44] Many of these countries have no corresponding laws regarding expression of sexual orientation.[45] Under a rigid

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[39] *Id.* at 823.
[40] *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1087 (9th Cir. 2000); *see also Doe v. Att'y Gen. of the United States*, 956 F.3d 135 (3d Cir. 2020); *Ayala v. U.S. Atty. Gen.*, 605 F.3d 941 (11th Cir. 2010).
[41] *Id.* at 821.
[42] *Id.*
[43] *See Bowers v. Hardwick*, 478 U.S. 186, 196 (1986).There is no right to "engage in homosexual sodomy" as Justice White described it, affirming that state bans on same-sex sexual activity were legal and acceptable in the United States. The direction the BIA took in *Toboso-Alfonso* therefore focuses on actions that would be considered First Amendment issues in the U.S., namely the expression of sexual identity to avoid touching on settled constitutional law.
[44] *Home Office Asylum claims on the basis of sexual orientation 2021* https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/asylum-claims-on-the-basis-of-sexual-orientation-2021--2; Human Rights Watch, *Map of LGBT Laws Around the World*, HUM. RTS. WATCH (last visited Apr. 2, 2023) https://internap.hrw.org/features/features/lgbt_laws/.
[45] *Id.*

interpretation of *Matter of Toboso-Alfonso*, a gay man seeking asylum from Nigeria would be unable to find relief in the United States, because Nigerian law punishes conduct same-sex *conduct* and not expression.[46]

It is important to keep in mind that the discretionary nature of immigration decisions means judges often do not apply the rules rigidly, and *Toboso-Alfonso* is generally read more favorably for LGBT asylees. Every asylum determination is fact-dependent and depends heavily on the judge.[47] In fact, an LGBT asylum seeker will usually not face the problems highlighted above. Dicta in other cases indicate that the blackletter law from *Matter of Toboso-Alfonso* is that members of the LGBT community are considered a PSG when seeking asylum.[48] But the weaknesses of *Matter of Toboso-Alfonso* remain important because it is the final authority on sexuality in asylum cases. While circuits have their own laws on the matter, the BIA is still bound to this 1990 decision distinguishing identity from conduct, despite its limitations. Adopting a legislative solution, such as adding a sixth ground for asylum, would address the weaknesses of *Toboso-Alfonso* and give more explicit and unequivocal instruction to immigration judges.

B. Social visibility and immutibility requirements cause significant problems for closeted LGBT asylees, as they often cannot demonstrate their social visibility.

While creative interpretation of precedent poses only a potential risk, social visibility requirements pose a very real present risk to LGBT asylees. Social visibility, paired with the requirement that asylees have already faced persecution in their home country, means that it is effectively impossible to claim asylum as a member of the LGBT community unless the person

[46] Criminal Code Act § 213 §§ 3 (1990) (Nigeria).
[47] 8 CFR § 1003.10 (b).
[48] *See, e.g., Castillo-Arias v. U.S. Atty. Gen.,* 446 F.3d 1190, 1197 (11th Cir. 2006).

has been outed, meaning that their community in their home country knew of their true gender or sexuality.[49] In many countries, same-sex intimacy carries a death penalty, and there is widespread violence against people who merely identify as LGBT.[50] Uganda, for example, has recently banned LGBT identification in any form. This includes a ban on promoting and abetting homosexuality as well as conspiracy to engage in homosexuality.[51] Simply applying for asylum outside of Uganda as a member of the LGBT community means that an applicant will have already violated Ugandan law, and could be subject to imprisonment upon their return to the country.[52] Refugees who are completely closeted will have a difficult time proving that they are recognized as a separate group by society.

Sempagala v. Holder highlights the problems closeted asylees face by showing how being closeted in one's home country can lead to consequences in an asylum hearing.[53] A bisexual man from Uganda applied for asylum in the United States due to the significant persecution faced by LGBT individuals in Uganda.[54] He freely admitted to the court that he could not provide evidence that people in Uganda knew of his sexuality, because he had purposefully kept it secret from his community.[55] The immigration judge determined that he had no well-founded fear of future persecution, and his denial was upheld—he was deported to Uganda.[56] The process thus creates a catch-22 for LGBT asylum seekers as they are required to out themselves in immigration courts in order to receive any kind of relief, putting themselves at

[49] *See Sempagala v. Holder*, 318 F. App'x 418 (6th Cir. 2009).
[50] Human Rights Watch, *Map of LGBT Laws Around the World*, HUM. RTS. WATCH (last visited April 2, 2023) https://internap.hrw.org/features/features/lgbt_laws/.
[51] Larry Madowo, *Uganda Parliament Passes Bill Criminalizing Identifying as LGBTQ, Imposes Death Penalty for Some Offenses*, CNN NEWS (Mar. 22, 2023) https://www.cnn.com/2023/03/21/africa/uganda-lgbtq-law-passes-intl/index.html.
[52] Charity Ahumuza Onyoin, *A grim return: post-deportation risks in Uganda*, FORCED MIGRATION R. 54 (2017).
[53] *Sempagala v. Holder*, 318 F. App'x 418 (6th Cir. 2009).
[54] *Id.* at 421.
[55] *Id.*
[56] *Id. at* 423.

risk if their case is denied and they are deported back to their home country. Thus, while it is possible for LGBT refugees to meet the well-founded fear of future persecution element of the law, it is difficult for them to prove they meet the visibility requirements in the PSG analysis.[57] For this reason, a separate ground for asylum, removing the social visibility requirement, is critical for LGBT asylees who are closeted in their home countries.

The immutability and social visibility requirements also cause significant problems for bisexuals and people who form relationships with partners of multiple gender identities. In *Fuller v. Lynch*,[58] the court determined that an asylum-seeker was lying about his sexual orientation as a bisexual man, and dismissed letters from three different ex-lovers that were presented as evidence, in part because the man was married to a woman.[59] The dissent stated that the trial judge "does not know the meaning of bisexuality."[60] As recently as 2022, an immigration judge issued an opinion finding that a Jamaican man was falsifying claims about his bisexuality and therefore not a member of a cognizable PSG; the Third Circuit overturned this decision, finding that the man's testimony was sufficient evidence of his bisexuality.[61] This relatively recent case demonstrates how immigration judges apply the PSG standard differently for bisexual individuals.

The visibility requirement is a feature exclusive to the PSG analysis. Curiously, other grounds for asylum have no such requirements beyond the burden of proof for past persecution

[57] *See Sempagala v. Holder*, 318 F. App'x 418 (6th Cir. 2009); *see also Marynenka v. Holder*, 592 F.3d 594, 601 (4th Cir. 2009). It is firmly established that testimony alone can be sufficient to allow for an asylum claim. *Sempagala* is informative about the court's understanding of this in PSG claims because nowhere in the decision do they say that the applicant's testimony was not credible. Here they are establishing a higher standard for a PSG based claim than claims made under other grounds. While this decision refers to the Real ID act, it is important to note that the "testimony alone" standard remained well after the act passed in 2004, as is evidenced by *Marynenka*.
[58] *Fuller v. Lynch*, 833 F.3d 866 (7th Cir. 2016).
[59] *Id.* at 868.
[60] *Fuller v. Lynch*, 833 F.3d 866, 874 (7th Cir. 2016) (Posner, J., dissenting).
[61] *K.S. v. Att'y Gen. of United States*, No. 20-3368, 2022 WL 39868 (3d Cir. Jan. 5, 2022).

or a well-rounded fear of future persecution. Even the political opinion ground does not require that the holder of the opinion form some cognizable "group" within their home country.[62] Thus, adopting a new ground for asylum would remove a significant impediment to LGBT claims by allowing people to rest their claims more heavily on the "well-founded fear of future persecution" element of asylum, rather than proving that individuals in their community would recognize them.

C. Matter of A-B-, a recent decision by the Trump Administration, could potentially be used to target LGBT asylees and show how asylum law is vulnerable to executive meddling.

The Trump Administration highlighted the flaws in the asylum system by testing the limits of accepted law with *Matter of A-B-*, one of the most controversial BIA decisions in decades.[63] Until 2017, asylees could seek refuge in the United States by claiming they were escaping domestic abuse in their home country.[64] *Matter of A-R-C-G-* ruled that "Guatemalan women who were not able to leave their husbands" was a sufficient PSG to stand as grounds for asylum.[65] If they could demonstrate that the government was unwilling or unable to prosecute their abusers, they had a valid claim for asylum under the PSG designation.[66] Following the ruling in *Matter of A-R-C-G-*, domestic violence victims from around the world used this legal theory to seek asylum in the U.S.[67]

The law changed in 2017 when then-Attorney General Jeff Sessions issued the decision in *Matter of A-B-* where he held that the group of "Guatemalan women who were not able to

[62] Guy Goodwin-Gill & Jane McAdam, THE REFUGEE IN INTERNATIONAL LAW 119 (5th ed. 2021).
[63] *See* Joel Rose, *The Justice Department Overturns Policy That Limited Asylum For Survivors Of Violence*, NPR (June 16, 2021) https://www.npr.org/2021/06/16/1007277888/the-justice-department-overturns-rules-that-limited-asylum-for-survivors-of-viol.
[64] *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014).
[65] *Id.*
[66] *Id.*
[67] *Matter of A-R-C-G-*, 128 HARV. L.R. 2090 (May 10, 2015).

leave their husbands" was not sufficient. [68] Furthermore, the lack of state action was a key factor in the determination.[69] The decision in the case was unusual, because Attorney General Sessions directed the BIA decision, rather than having the BIA issue the decision themselves.[70]

Matter of A-B- was overturned by Attorney General Merrick Garland in 2021 but the controversy surrounding the case has not died, and the law is far from settled on the issue.[71] A number of circuits that have ignored the Biden Administration's new directions, and have continued to deny women with domestic violence claims asylum.[72] On the other hand, some courts have moved the other direction and have come close to recognizing victims of gender-based violence as a per se PSG.[73] Immigration practitioners are currently scrambling to determine what is and is not the law in their jurisdiction, and immigration lawyers, government attorneys, and immigration judges are often unsure of what the applicable law is. This uncertainty has led to an uneven and unequal application of asylum law throughout the country and demonstrates how vulnerable the PSG category is to changing executive administrations.

Attorney General Sessions' decision in *Matter of A-B* was widely panned by domestic violence and immigration advocates, but LGBT advocates were similarly disturbed about the possible implications for their community.[74] Just as *Matter of A-B* was made binding by Attorney

[68] *Matter of A-B-*, 27 I. & N. Dec. 316 (2018).
[69] *Matter of A-B-*, 27 I. & N. Dec. 316, 338 (2018).
[70] 20 Am. Jur. 2d Courts § 129 (explaining the situations in which AG opinions are binding).
[71] *Matter of L-E-A- III*, 28 I&N Dec. 304 (AG 2021).
[72] *See Murillo-Oliva v. Garland*, No. 21-3062, 2022 WL 14729879 (6th Cir. Oct. 26, 2022) (Where the court held that claims that were denied during the *A-B-* regime did not apply L-E-A on appeal) *see also Penaloza-Megana v. Garland*, No. 21-60363, 2022 WL 2315884 (5th Cir. June 28, 2022) (where the court refused to reevaluate a case based on *A-B-*).
[73] *See De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020); *see also De Pena-Paniagua v. Barr*, 134 HARV. L. REV. 2574 (May 10, 2021).
[74] Press Release, Offices of Dianne Feinstein and Kamala D. Harris, Feinstein, Harris, *Colleagues Call on Sessions to Uphold Protections for LGBTQ Asylum Seekers Fleeing Persecution* (May 23 2018); Florence Project, *Our Statement on the Attorney General's Decision in the Matter of A-B-*, FLORENCE PROJ. (Jan. 18, 2019) https://firrp.org/our-statement-on-the-attorney-generals-decision-in-the-matter-of-a-b/.

General Sessions, *Matter of Toboso-Alfonso* was made binding by Attorney General Reno in 1994, it could be removed immediately at the whim of the next Attorney General,[75] leaving LGBT asylum seekers at the mercy of whoever happened to be in the White House at that point in time. Attorney General Sessions took a far more active role in determining BIA policy than previous administrations.[76] Under his supervision, the Attorney General used his appointment power to write more BIA decisions in 2018 than in all of the previous 10 years combined.[77] With the political right taking a more active role in dictating immigration policy through executive action, members of the LGBT community are rightfully concerned about what these developments could mean.

D. The private/public distinction laid out in Matter of A-B- *creates another challenge for LGBT asylum seekers targeted by non-state actors.*

Another troubling feature of *Matter of A-B-* is the emphasis on private versus public violence. While refugee law was initially targeted at state actors, this distinction proved impractical and insufficient to meet the needs of asylum seekers who were being oppressed by other groups.[78] U.S. asylum law provides that if the government of the asylee's home country is "unwilling or unable" to protect them, they may claim asylum.[79] While the law clearly provides this protection, as a practical matter, it is significantly more difficult to prove persecution by non-state actors.[80] This forms a significant problem, as many members of the global LGBT community face discrimination not from their governments, but from non-state actors that the

[75] Nora Snyder, *Matter Of A-B-, Lgbtq Asylum Claims, And The Rule Of Law In The U.S. Asylum System*, 114 NORTHWESTERN L.R. 809, 827 (2019).
[76] *Id.* at 834.
[77] *Id.*
[78] INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A)(2005).
[79] *Id.*
[80] Charles Shane Ellison & Anjum Gupta, *Unwilling Or Unable? The Failure to Conform the Nonstate Actor Standard in Asylum Claims to the Refugee Act*, 52 COLUM. HUM. RTS. L.R. 441, 442 (2021).

government does not wish to control.[81] For example, Iraq is one of the major points of origin for LGBT asylees[82] even though homosexuality has been decriminalized in Iraq since the 1960s.[83] Despite this de jure legality, LGBT Iraqis face violence at the hands of armed groups and many non-state actors. Armed Islamist groups such as ISIS and Hezbollah specifically target gays and lesbians, as members of state security forces often ignore abuses against the LGBT community.[84] If *Matter of A-B-* ignores action by non-state actors, then members of the LGBT community across the world are at risk.

Although the private/public actor distinction exists for other grounds beyond PSG, the courts tend to be less deferential when it comes to PSG claims. Case law about the exact standard for government inaction varies wildly based on circuit,[85] and the repeal of *Matter of A-B-* did not determine appropriate standards as AG Garland's opinion simply vacated the previous ruling.[86] In *A-B-*, the court conformed with the incredibly high *Galina v. INS* definition of persecution, requiring the government to be "completely helpless" in assisting someone for the actions to amount to persecution.[87] In contrast, in *Mashiri v. Ashcroft*, a nationality-based claim, the court found in favor of an Afghani family in Germany who had been targeted by Neo-Nazi groups.[88]

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[81] Human Rights Watch, *Iraq: Impunity for Violence Against LGBT People*, HUM. RTS. WATCH (Mar. 23, 2022) https://www.hrw.org/news/2022/03/23/iraq-impunity-violence-against-lgbt-people.
[82] Home Office, *Asylum claims on the basis of sexual orientation 2021*, HOME OFFICE https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/asylum-claims-on-the-basis-of-sexual-orientation-2021--2.
[83] Home Office, *Foreign travel advice Iraq*, HOME OFFICE (last visited Apr. 2, 2023) https://www.gov.uk/foreign-travel-advice/iraq/local-laws-and-customs.
[84] *Id*.
[85] *See Matter of A-B-*, 28 I. & N. Dec. 199, 3 (2021) (discussing the wide diversity of opinions which discus the relevant standard citing: *Guillen-Hernandez v. Holder*, 592 F.3d 883, 886-87 (8th Cir. 2010); *Kere v. Gonzales*, 252 F. App'x 708, 712 (6th Cir. 2007); *Shehu v. Gonzales*, 443 F.3d 435, 437 (5th Cir. 2006); *Hor v. Gonzales*, 421 F.3d 497, 501-02 (7th Cir. 2005); *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007)) showing the different standards for evaluating persecution by non-state actors).
[86] *Matter of L-E-A- III*, 28 I&N Dec. 304 (AG 2021).
[87] *Id*.
[88] *See, e.g.*, *Mashiri v. Ashcroft*, 383 F.3d 1112, 1116 (9th Cir. 2004); *Rodas-Mendoza v. I.N.S.*, 246 F.3d 1237 (9th Cir. 2001).

This case did not meet the 9th Circuit's standard for state violence, and the 9th Circuit has stated that violence "completely untethered to a governmental system does not afford a basis for asylum", but relief was granted anyway without a discussion of the standard.[89] Nothing close to the "completely helpless" PSG requirement was applied.

Thus, courts appear to be more hesitant about granting relief for violence done by non-state actors in PSG claims compared to in other claims (like nationality in *Mashiri*). One plausible reason is that because PSG as a category is so ill-defined, judges are stricter in their reading of requirements in order to avoid setting broad precedents. Therefore, the very ambiguity of the PSG definition leads judges to be stricter in application. While there is no guarantee that LGBT victims of private violence would fare better under a sixth ground of gender-based analysis than under the PSG analysis, it is possible that judges would feel more comfortable granting relief under a legal standard that is better defined.

III. Even Beyond Direct Legal Benefits, Practical Problems of Administrability and Fairness to LGBT Asylees Such as Ease of Litigation and Implicit Bias Would Be Improved Through a Sixth Ground for Asylum.

The complications created by the current PSG standard serve as an impediment for both immigration practitioners and pro se litigants in immigration courts.[90] Beyond the legal challenges discussed above, adding gender as a sixth ground would have the added humanitarian benefit of sparing applicants the pain of needing to understand one of the most complicated areas of asylum law: the PSG determination.[91] PSG case law represents a significant issue for pro se litigants, and this complication is an undue burden which would not be present in cases based on

[89] *Id*.
[90] Tahirih Justice Center, *ADDING "GENDER" AS A SIXTH GROUND of ASYLUM Frequently Asked Questions* (last visited Apr. 2, 2023) https://www.tahirih.org/wp-content/uploads/2021/04/FAQs-Adding-Gender-as-a-6th-Ground-of-Asylum_-1.pdf.
[91] *Id*.

the more straightforward grounds. A sixth ground would help LGBT petitioners craft claims as well as facilitate judicial throughput, making the appeals process easier and more transparent.

From the point of view of physicians, adding gender as a sixth grounds would be psychologically beneficial for asylees.[92] A faster and less painful process for seeking asylum would limit the amount of questioning needed and would help alleviate some of the trauma inherent in the asylum process.[93] Most often, people seek asylum as the last resort. Denial of claims is a psychologically damaging event, and often refugees who are denied asylum face significant risks upon returning to their country of origin.[94] The risks of outing oneself in the immigration process further increase the potential danger back home, and the trauma of the proceedings.[95] By publicly declaring their gender identity at trial, applicants thus open themselves to significant risk—both legal and psychological.

In the interest of fairness to asylees, a sixth ground could reduce implicit bias in the asylum system. Immigration proceedings in the United State give strong deference to the immigration judges that are hearing the cases. This means that applications for asylum and their results can vary wildly based on the judge in question. The difference is so extreme that some judges have upwards of 90% grant rates for asylum claims, while others tend to hover around 5%.[96] This problem can rear its head for asylum seekers who face homophobic judges who abuse their discretion. For instance, in two separate occasions, the Second Circuit overturned decisions

[92] Physicians for Human Rights, *Medical Evidence Highlights Urgency to Restore and Expand Legal Protections for Survivors of Domestic and Gang Violence who Seek Asylum in the United States*, PHYSICIANS FOR HUM. RTS. (June 9, 2021) https://phr.org/news/medical-evidence-highlights-urgency-to-restore-and-expand-legal-protections-for-survivors-of-domestic-and-gang-violence-who-seek-asylum-in-the-united-states/.
[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] TRAC Immigration, *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2017-2022*, TRAC (Oct. 26, 2022) https://trac.syr.edu/immigration/reports/judge2022/.

by one judge regarding claims by gay and bisexual men.[97] In the first instance, the court largely rooted its decision in a response to the issues of law upon which the judge based his denial.[98] In the second case, the court pointed its criticism towards the judge's candor in the courtroom and treatment of the opponent in cross-examination.[99] The judge made numerous disparaging remarks about the appellant's sexuality, and went so far as to make demeaning remarks about his genitalia and sexual performance.[100] The Second Circuit recommended that the judge be taken off future cases with LGBT applicants, arguing that allowing him to continue hearing these cases would not be in the interest of justice or the law.[101]

While it is commendable that the Second Circuit reprimanded this specific immigration judge for his continued egregious behavior, it is not possible for the circuit courts to review all claims for potential bias. There are over six hundred immigration judges across sixty-eight immigration courts.[102] Furthermore, many of the people who apply for asylum are represented pro se.[103] Asylees who lack the means to obtain counsel likely lack the knowledge and capacity to take an appeal all the way to a court of appeals. Thus, it is important to tackle bias at the immigration judge level.

Implicit bias plays a role in immigration proceedings, just as it does in other areas of law.[104] However, this is particularly problematic in asylum, as immigration judges play a more

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[97] *Id.*
[98] *See generally Walker v. Lynch*, 657 F. App'x 45.
[99] *Brown v. Lynch*, 665 F. App'x 19, 21 (2d Cir. 2016).
[100] *Id.*
[101] *Id.* at 22.
[102] OFFICE OF THE CHIEF IMMIGRATION JUDGE, DEPT. OF JUSTICE (last visited Apr. 2, 2023) https://www.justice.gov/eoir/office-of-the-chief-immigration-judge-bios#:~:text=OCIJ%20provides%20overall%20program%20direction,adjudications%20centers%20throughout%20the%20Nation.
[103] Congressional Research Service, *U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs*, CONG. RSCH. SERV. (Jul. 6, 2022) https://crsreports.congress.gov/product/pdf/IF/IF12158/3.
[104] Jerry Kang, Mark Bennett , Devon Carbado, Pam Casey & Justin Levinson, *Implicit Bias in the Courtroom*, 59 UCLA L.R. 1124, 1125 (2012).

active role in investigating the case than in other more traditional courtroom settings.[105] The power of immigration judges to cross-examine means they often serve as a second government attorney against the applicant and judicial cross-examination is often the primary method of determination for their cases. A sixth ground for asylum would not eliminate prejudice against LGBT asylum seekers but would require the judges to be aware that members of the LGBT community must be considered in determining who counts as a refugee. Hearing "or gender/sexuality" every time an applicant or their counsel read the standards for asylum would reinforce the idea in their mind, as research has shown that repeated exposure to exemplars of behavior can reinforce ideals and weaken bias.[106] Judges who are repeatedly reminded that gender-based claims are exemplars in the law may go a long way towards reducing implicit bias, which could result in better outcomes for LGBT asylees.

One of the greatest benefits of reconceptualizing gender and sexuality-based claims comes from visibility. Framing claims in terms of problems that are facing LGBT individuals is more humanizing than approaching them from the point of view of problems that people face because they are members of a distinguishable group of people. Beyond the practical legal reasons for adding a sixth ground, there is value in the legal system recognizing that individuals' problems are understood by the government. Writing about the problems women face while applying for asylum, immigration law scholar Talia Inlender argued that a sixth ground would empower women to seek redress for what has happened to them based more directly on who they are.[107] It would recognize the universality of harms that happen against women, and signal the

[105] *See* 8 CFR § 1003.10 (detailing the investigatory role of immigration judges).
[106] Félice van Nunspeet & Naomi Ellemers, *Reducing Implicit Bias: How Moral Motivation Helps People Refrain from Making "Automatic" Prejudiced Associations, Translational Issues in Psychological Science* 2015, 1, 382.
[107] Talia Inlender, STATUS QUO, OR SIXTH GROUND: ADJUDICATING GENDER ASYLUM CLAIMS, IN MIGRATIONS AND MOBILITIES: CITIZENSHIP BORDERS, AND GENDER, 366 (NYU Press, 2009).

government's drive to fix and eliminate these harms.[108] Similarly, adding gender/sexuality as a sixth ground would signal to the world that the United States is looking to be a leader in protecting the rights of the LGBT community.

IV. Adding Gender/Sexuality Would Protect the Intent of the Refugee Protocols

One of the principal benefits of adopting a sixth grounds for asylum would be to bring U.S. protections for LGBT people in line with the protections that are demanded by international law. While the United States has a rigid approach to using the PSG determination, most other countries are not as strict in their application of the rule. Instead, they take a broader approach to allowing individuals relief on PSG grounds. The United Nations High Commissioner for Refugees held a conference in 2002 to better define the PSG determinations, as the UN noted that there were wide discrepancies in the ways protocol parties were performing their duties to refugees applying under PSG grounds.[109] This committee resulted in a series of guidelines and recommendations that would better help member states meet their obligations.[110] One recommendation was for countries to adopt an either/or approach to the question of social visibility and immutability, rather than requiring both, as the U.S. does.[111] Furthermore, they emphasized the inclusive nature of the PSG designation, proposing no additional requirements for cohesiveness, nor any requirements that all members of the same group must face danger.[112] They put no limits on size—for instance, they have "women" as a potential PSG, so long as women in a particular society demonstrably face danger.[113]

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[108] *Id.*
[109] *See* Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 2, HCR/GIP/02/02 (May 7, 2002).
[110] *Id.* at 3.
[111] *Id.*
[112] *See generally id.*
[113] *Id. at 3.*

Not only does the United Nations support a gender-conscious view of asylum, but other peer nations and organizations find gender-based claims per se acceptable. The European Union (EU) Qualification Directive now provides in article 10(1)(d) that "[g]ender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group."[114] This is a recent improvement from their previous standards, making it easier for people to launch gender-based claims in the EU.[115] Similarly, New Zealand has through their common law implemented a per se rule on gender based claims, which they have expanded to LGBT asylum seekers.[116] Mexico has gone a step further and explicitly enshrined gender as a sixth ground.[117] These are just a few of the countries which have, in recent years, changed their law to facilitate gender-based asylum claims.

Opponents of the sixth ground say that this would bring the United States further away from international law (which only lists five enumerated grounds for asylum), and muddy the water of what is and is not considered a ground for relief.[118] They claim that gender is already protected by the text and the original meaning of the PSG grounds, and that countries should look to UN guidelines rather than creating a new grounds.[119] While these concerns have some merit, from the point of view of practicality, the PSG ground is overly broad, and judges are faced with advocates arguing new PSGs every day. In a PSG-based scheme, every new understanding of gender must be tied back to the PSG definition and adjudicated, whereas in a

[114] Guy Goodwin-Gill & Jane McAdam, THE REFUGEE IN INTERNATIONAL LAW 110 (5th ed. 2021).
[115] *Id.*
[116] *See Refugee Appeal No. 915/92 Re SY* (29 August 1994) 9-10; *Refugee Appeal No. 74665, No. 74665*, New Zealand: Refugee Status Appeals Authority, 7 July 2004.
[117] UNHCR Mexico, *Who is considered a refugee?* https://help.unhcr.org/mexico/en/quien-es-una-persona-refugiada/ (last visited May 15, 2023).
[118] Sabrineh Ardalan & Deborah Anker, *Re-setting Gender-Based Asylum Law*, HARVARD LAW BLOG (Dec. 30, 2021) https://blog.harvardlawreview.org/re-setting-gender-based-asylum-law/.
[119] *Id.*

scheme where gender and sexuality are explicitly protected, an immigration judge must simply tie the applicant's sexuality or gender identity to "gender/sexuality" as a ground. This would both be more efficient and would ensure that the U.S. is adjudicating gender and sexuality-based claims in the same general manner as other nations. Adding a sixth ground would also be a way for the United States to bypass the current legal and practical problems deeply rooted in the PSG ground.

Conclusion

Homophobia exists all over the world, and members of the LGBT community in some countries face existential threats to their lives and livelihoods. It is the responsibility of nations with the capacity to house such persecuted individuals to do so. The current asylum system in the United States has holes that leave LGBT asylees in dangerous positions where they are unable to seek relief. Some of these problems stem from the difficulty of making an asylum claim under the Particular Social Group grounds, while others stem from homophobia in society and in the asylum system.

Although a sixth ground for asylum would assist these individuals, legislators and the courts must continue to be vigilant to root out problems that arise from elsewhere in the immigration system. For instance, in recent years, the Biden Administration has continued numerous Trump-era policies that impose artificial barriers to asylum, including requiring those passing through third intermediate countries to first apply for asylum there before coming to the United States.[120] These practices are particularly problematic for LGBT asylum seekers who face homophobia from officials in these intermediate countries, and are not protected by their

[120] Katrina Eiland & Jonathan Blazer, *Biden Must Reverse Plans to Revive Deadly Trump-era Asylum Bans*, ACLU (Jan. 26, 2023) https://www.aclu.org/news/immigrants-rights/biden-must-reverse-plans-to-revive-deadly-trump-era-asylum-bans.

respective laws.[121] Furthermore, lack of oversight in immigrant detention facilities leads to severe abuse for asylum seekers. Transgender asylees are often subject to physical and sexual abuse in detention centers, and are frequently kept in isolation for lengthy periods of time.[122] As helpful as a sixth grand for asylum would be, it is not a panacea for all of the issues that unduly burden LGBT asylees. This is an area ripe for future research.

Nonetheless, as has been demonstrated above, adding gender and sexuality as a sixth protected ground for asylum would be an essential first step. Not only would a sixth ground better protect members of the LGBT community, but it would also better protect all victims of gender-based violence. If the United States wants to be a leader in global LGBT rights, it must serve as a refuge for people who are facing discrimination based on their sexuality and gender identity. The interests of justice, and better fulfilling the founding ideals of the 1951 Refugee Convention, would be best served with a sixth ground.

[121] Heather Cassell, *Immigration advocates urge Biden to reconsider asylum policy*, GAY CITY NEWS (Feb. 28, 2023) https://gaycitynews.com/immigration-advocates-urge-biden-reconsider-asylum-policy/.
[122] Sam Levin, *A trans woman detained by Ice for two years is fighting for freedom: 'I've been forgotten'*, THE GUARDIAN, https://www.theguardian.com/us-news/2021/jun/09/a-trans-woman-detained-by-ice-for-two-years-is-fighting-for-freedom-ive-been-forgotten (June 9, 2021).

Applicant Details

First Name	**Olivia**
Last Name	**Schoffstall**
Citizenship Status	**U. S. Citizen**
Email Address	**olivia_schoffstall1@baylor.edu**
Address	**Address** **Street** **901 Arlington Drive** **City** **Waco** **State/Territory** **Texas** **Zip** **76712** **Country** **United States**
Contact Phone Number	**5402193580**

Applicant Education

BA/BS From	**University of Virginia**
Date of BA/BS	**May 2017**
JD/LLB From	**Baylor University School of Law** **http://www.baylor.edu/law/**
Date of JD/LLB	**April 27, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**Baylor Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Baylor Law Faegre-Drinker Spring Moot Court Competition, 2022** **Judge John R. Brown Admiralty Moot Court Competition, 2023** **National Veterans Law Moot Court Competition, 2022**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Taylor, Holly
Holly.Taylor@traviscountytx.gov
(512) 496-8253
Yanowitch, Paul
paul_yanowitch@baylor.edu
Jaeger, Christopher
chris_jaeger@baylor.edu
615 440-0040

This applicant has certified that all data entered in this profile and any application documents are true and correct.

OLIVIA J. SCHOFFSTALL

901 Arlington Drive | Waco, TX 76712
(540) 219-3580 | olivia_schoffstall1@baylor.edu

May 11, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am writing to apply for a one-year clerkship position in your chambers beginning in August 2024. I am a rising third-year student at Baylor Law School, serving as the Managing Senior Executive Editor for the *Baylor Law Review*. I am a native Virginian and hope to serve my home state as a clerk. In the long term, I plan to practice litigation and hope to eventually serve as an assistant U.S. attorney.

I believe I can contribute to your chambers with my strong research and writing skills. My first-year legal writing received recognition, including the High A in my appellate legal writing class. This year, I have continued to develop my writing by competing in two moot court competitions and serving as a research assistant. My internship with the Travis County District Attorney's Office required extensive legal research and writing for criminal appellate cases. This builds upon my professional editorial, grant writing, and research experience.

Enclosed are my resume, law school transcript, and writing sample. The writing sample is an appellate brief examining the proper legal framework for IVF pre-embryo ownership. Additionally, I have enclosed letters of recommendation on my behalf from the following individuals:

Holly Taylor	Professor Chris Jaeger	Professor Paul Yanowitch
Travis County District Attorney	Baylor Law School	Baylor Law School
Austin, Texas	Waco, Texas	Waco, Texas
Holly.Taylor@traviscountytx.gov	Chris_Jaeger@baylor.edu	Paul_Yanowitch@baylor.edu
(512) 496-8253	(254) 710-6590	(254) 710-3611

Please let me know if I can provide any other information that would be helpful. Thank you for your time and consideration.

Sincerely,

Olivia Schoffstall

OLIVIA J. SCHOFFSTALL

901 Arlington Drive, Waco, TX 76712 | (540) 219-3580 | olivia_schoffstall1@baylor.edu

EDUCATION

Baylor University School of Law, Waco, TX 2024
Candidate for Juris Doctor, GPA: 3.63, Class Rank: 22/198 (Top 11%)

Honors: High A: Federal Courts; Criminal Procedure; Persuasive Communication; Supreme Court Seminar
Dean's List (six quarters)
Baylor Barrister Society

Advocacy: Judge John R. Brown Admiralty Moot Court Competition, March 2023 (Semi-finalist; Best Team Oral Advocates, 1st Place; Best Brief, 3rd Place; Best Oral Advocate, 4th Place)
National Veterans Law Moot Court Competition, November 2022

Activities: *Baylor Law Review* (Managing Senior Executive Editor, 2023–24)
Christian Legal Society (Vice President, 2022–23)
Student Ambassador

Reformed Theological Seminary, Washington, D.C. 2018
Non-degree fellowship involving theological writing courses focused on vocation and service.

University of Virginia, Charlottesville, VA 2017
Bachelor of Arts in Economics & Minor in Religious Studies, GPA: 3.30

Honors: Dean's List

Study Abroad: University of Edinburgh, Edinburgh, Scotland, Fall 2015

EXPERIENCE

Hogan Lovells US LLP, Houston, TX May–July 2023
Summer Associate, Litigation, Arbitration, and Employment Group (full-time)

Baylor University School of Law, Waco, TX January–May 2023
Research Assistant to Professor Jessica Asbridge (part-time)
Conducted legal research for a 50-state survey of the application of state Excessive Fines Clauses.

Travis County District Attorney's Office, Austin, TX May–August 2022
Legal Intern, Conviction Integrity Unit (full-time)
Conducted legal research and drafted memoranda assessing claims for actual innocence and wrongful conviction.

Limestone County District Attorney's Office, Groesbeck, TX April–May 2022
Legal Intern (part-time)
Drafted charges, stipulations, memoranda, and responses to writs of habeas corpus. Conducted legal research.

Prison Fellowship, Washington, D.C.
Legal Research Contractor (part-time) April–August 2022
Supported legislative research projects, including drafting criminal justice campaign and lobbying materials.

Advocacy External Relations & Project Manager (full-time) June 2018–July 2021
Provided project management for criminal justice reform campaigns in 14 jurisdictions. Oversaw federal and state lobby compliance for 250+ staff. Served as primary contact for coalition partners, funders, and media.

Center for Public Justice, Washington, D.C. September 2017–May 2018
Assistant Editor, Shared Justice (part-time)
Managed *Shared Justice* writers and communications. Provided editorial review for all published articles.

Other Experience: The Juice Laundry (*Smoothie Maker*); Ashoka (*Intern*, data analysis); Community Investment Collaborative (*Intern*, micro-loan advisement); Trinity Education (*Intern*, computer programming).

ADDITIONAL INFORMATION

Violinist, long-distance runner and road cyclist, Executive Producer of *A New Day 1* (documentary following people returning home after incarceration), conversational in Italian and Spanish, semi-professisonal house sitter.

OLIVIA J. SCHOFFSTALL

Baylor Law School

UNOFFICIAL LAW SCHOOL TRANSCRIPT

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts 1	Jim Underwood	A-	4	
Contracts 1	Larry Bates	B+	4	
Civil Procedure	Jeremy Counseller	B-	4	
LARC: Intro to Legal Writing	Matthew Cordon	A-	2	Part 1 of 2

Winter 2021-22

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts 2	Larry Bates	A	4	
Criminal Law	Paul Yanowitch	A-	3	
Property 1	Jessica Asbridge	B+	4	
Torts 2	Jim Underwood	B+	3	
LARC: Intro to Legal Writing	Matthew Cordon	A-	1	Part 2 of 2

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Procedure	Paul Yanowitch	A	3	High A
Property 2	Jessica Asbridge	A	3	
Con Law: Individual Liberties	Brian Serr	A-	3	
LARC: Persuasive Comm.	Chris Jaeger	A	2	High A

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Trusts & Estates	Tom Featherston	B+	5	
Business Organizations 1	Elizabeth Miller	B+	5	
Tax & Accounting Principles	Christine Robinson	B+	2	
Supreme Court Seminar	Brian Serr	A	2	High A
Moot Court	Larry Bates	A	2	

Winter 2022-23

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Federal Courts	Paul Yanowitch	A	3	High A
Con Law: Structure & Powers	Brian Serr	A	4	
Alternative Dispute Resolution	Chris Jaeger	A	2	
Federal Administrative Law	Jessica Asbridge	A-	2	
LARC: Transactional Drafting	Kayla Landeros	A-	1	

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Legal Research	Matthew Cordon	A	3	
Complex Litigation	Jim Underwood	A-	3	
Conflict of Laws	Luke Meier	A-	3	
Remedies	Laura Hernandez	B+	3	
LARC: Litigation Drafting	Greg White	A-	1	
Moot Court	Lee Ann James	A	2	

OFFICE OF THE
DISTRICT ATTORNEY
P.O. Box 1748, Austin, TX 78767

JOSÉ P. GARZA
DISTRICT ATTORNEY

Telephone 512/854-9400
Telefax 512/854-4206

TRUDY STRASSBURGER
FIRST ASSISTANT

November 19, 2022

To Whom It May Concern:

I am writing to share with you the stellar qualifications of Baylor law student Olivia Schoffstall. I had the pleasure of working closely with Olivia last summer when she served as a summer intern in the Travis County District Attorney's Office's Conviction Integrity Unit (CIU) from May to August of 2022.

While serving as an intern in the CIU, Olivia worked diligently on every project assigned to her. She frequently made the arduous drive down I-35 to Austin so that she could work closely with our team in the office. Olivia participated in our weekly team meetings and quickly became a crucial part of our CIU Team. We valued her clever insights, strong work ethic, keen intelligence, compassion, and pleasant demeanor. Despite the sometimes-tense nature of the work, Olivia remained unruffled and often offered to help with whatever challenges the CIU was facing. It was difficult for our CIU team to say goodbye to Olivia when she completed her internship!

Olivia's experience managing a large team and heavy workload with the Prison Fellowship showed in her exceptional organizational and time-management skills. Each time Olivia received a CIU assignment, she worked independently and diligently on the task, requiring no oversight. I was astounded by how many projects she completed for the CIU in such a brief time. She finalized at least eight substantive research memos, including both case-specific topics and legal research with broader applicability to the CIU's work.

Olivia's prior experience drafting and editing research reports was evident in her high-quality work product. Each of Olivia's memos was carefully researched, well-reasoned, factually accurate, and free of clerical errors. Her writing was always succinct and easily understandable, yet comprehensive in its consideration of the applicable law and facts. I have never seen such extraordinary written work from an intern.

I found myself assigning Olivia increasingly complex projects as the summer went on and each time she rose to the challenge. I was reviewing certain aspects of the CIU's procedures. Olivia assisted me in this endeavor by conducting a nationwide survey of other CIUs' intake forms. In addition, she made recommendations for our CIU's intake process and drafted a template for a new intake form for our unit.

I have spent several years of my career as a staff attorney for an appellate court. Based on that history and my experience working with Olivia, I believe that her research and writing skills, dedication to public service, ability to simplify and clarify complicated subjects, strong work ethic, and genial demeanor make her the perfect candidate for a judicial clerkship.

Please feel free to contact me with any questions about Olivia.

Best Regards,

Holly E Taylor

Holly Taylor
Assistant Director, Civil Rights Division
Travis County District Attorney's Office

May 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am extremely pleased to write a letter supporting Olivia Schoffstall in her effort to secure a clerkship in your chambers. Over the past year Ms. Schoffstall was an active and exceptionally engaged student in my Criminal Law and Criminal Procedure classes. As evidenced by her resume, she did very well in both classes -- indeed, she received the “high A” in Criminal Procedure – and has had similar success in her other first-year classes. But it is not (just) Ms. Schoffstall’s impressive intellectual ability that leads me to recommend her to you; it is her exceptional motivation and maturity as well.

Initially, Olivia came to my attention as a result of her contributions during class. As I expect you recall, most students, and particularly first-year students, participate in class only when called on. It has been my experience that in each class there are one or two students at most who prove the exception and yet whose contributions invariably are outstanding. Olivia was that student in her classes. She not only regularly and respectfully contributed to the class discussion, but more importantly, she was willing to engage me when I posed questions or took positions that were intended to illustrate the difficulty of extending principles to unforeseen or unusual circumstances and the ever-present problem of “drawing lines” in a common-law system. What most impressed me was not just that Olivia chose to contribute when the discussion became most difficult and provocative, but that her contributions, almost always insightful, always were respectfully argued. All of this made her stand out from her classmates.

I also have had the opportunity to meet with Olivia several times outside of class. Most of these meetings, as one might expect, related to issues raised in class, and in our discussions Olivia, again, demonstrated a keen intellect. What struck me was not just that she had uncommon insight for a first-year law student, but that she fully embraced the weight of the competing arguments on difficult issues and was struggling to identify how we do resolve and perhaps otherwise should resolve such problems -- and that she was doing so out of a genuine desire to learn, and not because the issue might be on an examination.

I also learned through our discussions that Olivia has a passion for public service and in particular a strong interest in becoming a prosecutor. Having worked for the United States Department of Justice for 30-plus years, the last 14 or so as a federal prosecutor, I admittedly am somewhat biased toward students who express an interest in public service. Olivia made it clear that her experiences in public service, including her tenure with the Prison Fellowship and especially her recent internships with two District Attorneys’ offices, have convinced her to pursue (following a clerkship, hopefully) a career as a prosecutor, and to use the extraordinary powers and discretion delegated to prosecutors to further the public good. I whole-heartedly commend Olivia for this, and believe it is a powerful testament to her character and faith.

As her resume documents, and as I have adverted to above, prior to coming to law school Olivia held positions in several public interest organizations that demanded great resolve and patience. I believe that these have given Olivia a perspective and maturity that few of her classmates can match. They also demonstrate, I submit, how seriously Olivia views the obligations that as a lawyer of faith she has to others and especially the less fortunate. Again, I think this distinguishes Olivia from many if not most law students and lawyers.

One other thing about Olivia deserves special mention: she is an excellent writer. In both my classes I require students submit a written assignment intended to force them to produce a pithy, terse discussion of legal issues in a practical setting. The written work Olivia submitted to me were excellent examples of effective legal writing. It has been my experience over 35-plus years of practice and several years teaching that most lawyers and law students are not particularly good writers. I found Olivia’s written work to be clear, concise, and professional, which is consistent with her having received consistently high grades in her first-year writing courses (LARC 1 -3).

Many years ago I was fortunate enough to serve as a judicial clerk to a federal judge. As I remember it, that was one of the most intellectually engaging and valuable professional experiences in my life. I am confident that Olivia, if given the opportunity, will quickly prove herself to be a valuable and trusted member of your chambers. I can say without reservation that she has the intellectual ability, discernment, and judgment that a federal judge rightly demands in judicial clerks.

For all these reasons, I commend Ms. Schoffstall to you without reservation. If I can be of any further assistance, please do not hesitate to contact me at your convenience.

Sincerely,

Paul Yanowitch
Adjunct Professor of Law
Baylor Law School
(410) 703-8415

May 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to express my strong support for Olivia Schoffstall's application to serve as your judicial law clerk. Olivia was a star student in my Spring 2022 legal writing class (titled "LARC 3: Persuasive Communication"), earning the top grade by a comfortable margin. Olivia's work in my class was as strong as any student work I have received at Baylor Law School or in my previous position teaching legal writing at NYU School of Law—she ranks among the top two to three legal writers I've had the privilege of teaching. Beyond her exemplary research and writing skills, Olivia is consistently congenial, humble, hardworking, and genuinely intellectually curious. Having served as a judicial law clerk myself, I believe Olivia has all of the skills and attributes needed to excel in a clerkship—I was thrilled to learn she is applying, as I hoped she would choose to do so. I recommend Olivia enthusiastically and without reservation.

LARC 3: Persuasive Communication is a first-year course designed to develop students' skills in research, legal analysis, writing, and oral advocacy. The course focuses specifically on appellate brief writing and argument. Olivia and her classmates independently researched and wrote 20-page briefs advocating for one side of a dispute about the disposition of a divorcing couple's frozen pre-embryos. The case was (deliberately) messy, forcing the students to sort through issues of law they had not yet encountered in their coursework. The students worked on a tight timeline, with the quarter starting February 8, a first draft due March 18, and a revised brief due on April 14. Further, during this period, students delivered at least five oral arguments on the case through the Faegre Drinker Moot Court competition. Olivia's work exceeded all expectations on all fronts. Her brief was not just the strongest in her class, but one of the strongest two to three pieces of student writing I have ever received—thorough, clear, and to the point, demonstrating impressive research and strong analytical abilities. Much of the brief read to me more like the work of an early-career attorney than a 1L. Based on my observations, Olivia is similarly skilled as an oral advocate. She grasps how to "think like a lawyer"; she has a knack for piecing together ideas and arguments and relaying them in a clear, persuasive manner.

In addition to Olivia's impressive intellectual abilities, she was a pleasure to have as a student. She was a regular participant in class discussions, always sure to ask a particularly incisive or thoughtful question about the topic at issue. She demonstrated genuine curiosity for each topic we discussed. I am completely confident Olivia would be a congenial and supportive clerk who would be fully engaged with the work of your chambers.

In sum, Olivia is one of the strongest students I've had the privilege to teach. I highly recommend Olivia based on her intelligence, strong legal research, analytical, and writing skills, conscientiousness, and congeniality. If you have any additional questions or if there is any additional information I can provide in support of her application, please do not hesitate to contact me, either by phone (615-440-0040) or by email (Chris_Jaeger@baylor.edu).

Sincerely,

Christopher Brett Jaeger

OLIVIA J. SCHOFFSTALL

901 Arlington Drive, Waco, TX 76712 | (540) 219-3580 | olivia_schoffstall1@baylor.edu

WRITING SAMPLE

The following writing sample is a brief to the Supreme Court of Texas from my persuasive legal writing class. The brief argues for the nonenforcement of an IVF informed consent form based on Texas legislative policy, precedent, and the parties' lack of mutual assent. I received the High A for this brief. The content has not been substantively edited since submission.

No. 21-BLS001

In the Supreme Court of Texas

AXEL B.,

Petitioner,

v.

REANNA B.,

Respondent.

On Petition for Review from the Court of Appeals for the Fifteenth District of Texas

RESPONDENT'S BRIEF ON THE MERITS

Olivia Schoffstall
Professor Jaeger
Attorney for Respondent
April 14, 2022

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TABLE OF AUTHORITIES

Statutes

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ISSUES PRESENTED

I. Whether the balancing-of-interests approach is the proper legal framework for determining the disposition of frozen pre-embryos when one party has a change of heart after entering an agreement that requires them to procreate.

II. Whether the balancing-of-interests approach is the proper legal framework to apply when the parties lack an enforceable agreement governing the disposition of their remaining frozen pre-embryos in the event of divorce.

STATEMENT OF JURISDICTION

This appeal was taken from a final judgment of the Court of Appeals for the Fifteenth District of Texas. This Court has appellate jurisdiction pursuant to Tex. Gov't Code § 22.001. Tex. Gov't Code § 22.001.

STATEMENT OF FACTS

I. Factual Background

Reanna B. (respondent) and Axel B. (petitioner) were married in 2011. J.A. at 5. Reanna struggled to become pregnant. J.A. at 5. Looking for alternatives, she underwent an examination by Dr. Maxine Fusewood at the Assisted Reproduction Services Center of Ricken County (the Center). J.A. at 5. Dr. Fusewood advised the couple that In Vitro Fertilization (IVF) could significantly increase Reanna's chances of becoming pregnant due to her scarred fallopian tubes and ovarian insufficiency.[1] The parties decided to try for a biological child through IVF and scheduled the procedure for November 2016. J.A. at 7.

During a brief, 20-minute office visit before the first IVF procedure, the Center required Reanna and Axel to sign nine different forms. J.A. at 7. Among the forms was the "Informed Consent for Cryopreservation of Pre-Embryos," a four-page single-spaced document describing the cryopreservation process and the procedure's risks.[2] The form also provided instructions for cryopreserved pre-embryos in the event of certain contingencies. J.A. at 38. It offered six options for the disposition of frozen pre-embryos after divorce. J.A. at 38.

Before this visit, Axel independently considered the pre-embryos' disposition in the event of divorce. J.A. at 8. He decided he would be comfortable donating the

[1] IVF consists of a series of procedures to collect and fertilize a woman's eggs, resulting in pre-embryos. "Pre-embryo" is the medical term for a fertilized egg that has not been implanted in a uterus. The pre-embryo develops fully only if it is implanted, after which a viable pregnancy may occur. J.A. at 4, 6.

[2] Pre-embryos are either implanted in a uterus or cryopreserved for possible future use. J.A. at 6.

pre-embryos to another IVF couple. J.A. at 8. When signing the form, Axel suggested they select the option to donate the pre-embryos anonymously if they divorced. J.A. at 8. Reanna signed the form without giving that question much thought. J.A. at 8. She only agreed with Axel's decision because she wanted to move forward with the IVF process. J.A. at 9. Divorce was the last thing on her mind. J.A. at 8.

After the Center obtained Reanna and Axel's consent, the couple began the IVF process and produced ten pre-embryos. J.A. at 8. Reanna underwent two unsuccessful rounds of implantation using four of the ten pre-embryos. J.A. at 8. At that point, Axel decided that he did not want to do the procedure again. J.A. at 8. Reanna disagreed, and the couple's relationship deteriorated. J.A. at 8. They separated in July 2019 and filed for divorce soon after. J.A. at 8. In the divorce proceeding, Reanna and Axel disputed the proper disposition of the remaining six pre-embryos generated through the parties' participation in IVF. J.A. at 4.

II. Procedural History

The parties filed competing motions for summary judgment and stipulated the treatment of the pre-embryos as "property with special dignity."[3] Reanna argued that the informed consent form should not govern this dispute and that the court should apply the balancing-of-interests test instead. J.A. at 10. She desires to use the pre-embryos in additional IVF rounds and resents that another couple should have her pre-embryos. J.A. at 9. Meanwhile, Axel argued that the court should enforce the

[3] Treating pre-embryos as "property with special dignity" occupies an interim legal category applied by most courts to consider this issue. *See, e.g.*, *Davis v. Davis*, 842 S.W.2d 588, 597 (Tenn. 1992) (describing pre-embryos as occupying "an interim category that entitles them to special respect because of their potential for human life").

informed consent form. J.A. at 10–11. Alternatively, he argued that the Center should continue to store the pre-embryos until the parties agree on a disposition. J.A. at 11.

The trial court granted Reanna's motion for summary judgment and denied Axel's motion. J.A. at 11. The court then issued a final divorce decree awarding the pre-embryos to Reanna. J.A. at 11. Axel appealed, and the Court of Appeals affirmed. He then filed a petition for review to the Texas Supreme Court. J.A. at 11.

SUMMARY OF THE ARGUMENT

The law exists to protect humans. To achieve this purpose, the law must account for human nature. And for better or worse, a fundamental aspect of being human is changing one's mind. The ability to reconsider and improve is crucial to human identity and survival. Laws that ignore or penalize this reality in matters as intimate as procreation are ineffective and unethical.

This case is about recognizing the humanity of Texans seeking to build a family. This Court should affirm because Texas policy and precedent support the application of the balancing-of-interests test when one party has a change of heart after entering an agreement that would force them to procreate. In the alternative, the balancing-of-interests test is the appropriate legal framework to apply when the parties lack an enforceable agreement governing the disposition of their remaining pre-embryos in the event of divorce.

The balancing-of-interests test embodies principles codified in Texas law in two ways. First, Texas legislative policy gives effect to a party's change of heart in other procreation agreements. Second, Texas legislative policy indicates a role for courts in

similar contexts, warranting the application of the balancing-of-interests test here. Notably, the *Roman* court's analysis of Texas policy should not extend to this case because it ignores pertinent provisions in the Texas Family Code (TFC) and provides an inadequate remedy for this case.

Further, applying the balancing-of-interests test is consistent with precedent. Enforcing Reanna and Axel's agreement would be inconsistent with precedent in this state and other jurisdictions by forcing Reanna to become a genetic parent. Additionally, most courts have rejected the mutual contemporaneous consent approach because it fails to resolve disputes effectively.

In the alternative, courts have applied the balancing-of-interests test absent an enforceable agreement. Courts have refused to enforce informed consent forms as binding divorce agreements when they lacked mutual assent. Because the parties' informed consent form lacks mutual assent, this Court should apply the balancing-of-interests test.

STANDARD OF REVIEW

The standard of review for summary judgment is de novo. *Mid-Century Ins. Co. of Texas v. Ademaj*, 243 S.W.3d 618, 621 (Tex. 2007). When the parties both moved for summary judgment at trial and the court granted one while denying the other, the court of review will "determine all questions presented and render the judgment the trial court should have rendered." *Id.*

ARGUMENT

I. This Court should affirm because Texas policy and precedent support the application of the balancing-of-interests test when one party has a change of heart after entering an agreement that would force them to procreate.

Courts have considered three pathways to resolve the disposition of frozen pre-embryos upon the divorce of the progenitors. *Bilbao v. Goodwin*, 217 A.3d 977, 984–96 (Conn. 2019) (reviewing the approaches). First, under the balancing-of-interests test, the court weighs each party's interests and desires for the pre-embryos. *Id.* at 985. Second, courts applying the contractual approach presume agreements between the progenitors governing the disposition of the pre-embryos are valid and enforceable in disputes between the couple. *Id.* at 984. Lastly, the mutual contemporaneous consent approach requires the parties to agree to a disposition of the pre-embryos; otherwise, the pre-embryos remain in storage indefinitely. *Id.* at 985.

Most courts have chosen to apply the balancing-of-interests test or the contractual approach. *See, e.g.*, *Bilbao*, 217 A.3d at 986 (applying the contractual approach); *J.B. v. M.B.*, 783 A.2d 707, 719 (N.J. 2001) (applying the balancing-of-interests test). In doing so, courts have explicitly rejected the mutual contemporaneous consent approach for two reasons. *See, e.g.*, *In re Marriage of Rooks*, 429 P.3d 579, 592 (Colo. 2018), *cert. denied*, 139. S. Ct. 1447 (2019) (rejecting the mutual contemporaneous consent approach). First, this approach is unrealistic because the parties would not be in court if they could reach a mutual decision for the disposition of their pre-embryos. *Id.* at 589. Second, the party opposing the other

party's intended use is guaranteed a de facto win simply by the passage of time. *Id.* Through this, a party may independently achieve a result the court was unwilling to grant when it decided the case. *Id.* For these reasons, this Court should narrow its inquiry for the proper legal framework to the balancing-of-interests test and the contractual approach.

A. Texas legislative policy supports the application of the balancing-of-interests test when a party has a change of heart after entering an agreement that would result in procreation.

This Court has long held that parties may not contract in a manner that contravenes public policy. *Curlee v. Walker*, 244 S.W. 497, 498 (Tex. 1922). Texas positive law is the first place to turn when asking what constitutes Texas public policy. The Texas legislature has addressed the enforcement of agreements for assisted reproduction and surrogacy in the Uniform Parentage Act. Tex. Fam. Code Ann. §§ 160.701–.707, .751–.763. The Act recognizes changes in heart and the role of the court in procreational agreements. These principles can inform whether the enforcement of Reanna and Axel's agreement would violate Texas policy.

1. Texas legislative policy gives effect to a party's change of heart in agreements for procreation.

Human nature does not evaporate once a contract is signed. Parties acting in good faith may enter an agreement and then later have a change of heart. The likelihood of a person changing their mind increases when the subject matter is an intimate topic, and even more so over time. *See In re Marriage of Witten*, 672 N.W.2d 768, 777 (Iowa 2003) (explaining the difficulty of deciding to relinquish a right before exercising that right). The Texas Family Code (TFC) recognizes and gives effect to

this reality in agreements to procreate through surrogacy and assisted reproduction. Tex. Fam. Code Ann. §§ 160.706, .754(e), .759(a).

TFC gives effect to changes of heart in surrogacy agreements in two provisions. First, TFC permits parties to terminate a surrogacy agreement before insemination. Tex. Fam. Code Ann. § 160.759(a). Any party to the agreement may terminate it, including the gestational mother, spouse, or intended parent. *Id.* Second, TFC provides that parties to a surrogacy agreement must enter the agreement at least 14 days before insemination. Tex. Fam. Code Ann. § 160.754(e). By providing a two-week window for the parties to reflect upon the agreement, the legislature recognized that people are apt to change their minds in consequential matters like procreation. For this reason, the law permits a party to withdraw from the agreement without penalty. *Id.*

TFC also addresses changes of heart in the context of assisted reproduction, specifically the effect of a dissolved marriage on an assisted reproduction agreement. Tex. Fam. Code Ann. § 160.706. The statute expressly permits a former spouse to withdraw their consent to assisted reproduction before insemination. *Id.* Even after divorce, a spouse can change their mind about participating in assisted reproduction and thus avoid legal parenthood. *Id.*; J.A. at 18.

These statutes demonstrate that Texas law does not force a person to procreate against their will for the sake of contractual posterity. Instead, the law recognizes and gives effect to a party's change of heart in agreements to procreate. J.A. at 18–19. Courts outside of Texas have reached similar conclusions after examining their

states' laws on contracts that involve familial relationships (e.g., surrogacy, adoption, and marriage). *See, e.g.*, *J.B.*, 783 A.2d at 717–19 (holding assisted reproduction agreements are enforceable subject to the right of either party to change their mind about the disposition of pre-embryos); *Witten*, 672 N.W.2d at 781–83 (reasoning that giving effect to either party's change of heart acknowledges policy concerns inherent in enforcing prior decisions of a personal nature, like IVF).

Here, Reanna and Axel's agreement is like the agreements for surrogacy and assisted reproduction addressed by the legislature in two ways: (1) the makeup of the parties and (2) the purpose of the agreement. First, in agreements for surrogacy and assisted reproduction, the parties are a couple seeking to have a child and a third party. Tex. Fam. Code Ann. §§ 160.704, .754. In surrogacy agreements, the third party is the surrogate mother; in assisted reproduction, the third party is the health care provider. Tex. Fam. Code Ann. §§ 160.704, .754. Here, Reanna and Axel were a married couple seeking to have children when they signed the informed consent form. J.A. at 7. The third party to their agreement is the Center. J.A. at 5, 7. Therefore, the parties to Reanna and Axel's agreement are like the parties to the procreational agreements addressed by the legislature. Tex. Fam. Code Ann. §§ 160.704, .754. Second, surrogacy and assisted reproduction agreements share the same ultimate purpose as Reanna and Axel's informed consent form: for some parties to achieve procreation. J.A. at 7. For these reasons, the legislative intent behind these surrogacy and assisted reproduction provisions should apply to Reanna and Axel's agreement.

Further, Reanna has had a sincere change of heart. J.A. at 9. The informed consent form does not reflect her present desires, and Texas policy does not force her to be bound by that agreement. J.A. at 9, 19. Instead, the balancing-of-interests test is the appropriate framework to resolve her dispute. J.A. at 9. This approach would allow the Court to carefully weigh Reanna's present interests and desires, alongside Axel's present interests and desires, in deciding who should retain custody of the pre-embryos. *See J.B.*, 783 A.2d 716–17, 719–20 (applying the balancing-of-interests test). Recognizing that people often change their minds about significant life events, the balancing-of-interests approach gives this Court the power to "break [the] deadlock" between the disagreeing parties. J.A. at 19. For this reason, the mutual contemporaneous consent approach would be inappropriate. *See Rooks*, 429 P.3d at 589 (explaining the mutual contemporaneous consent approach fails to resolve disputes effectively). Although that approach would recognize Reanna's change of heart, it would prolong rather than resolve the parties' dispute. *Id.*

2. Texas legislative policy affirms the role of the court in determining whether to enforce procreation agreements.

While freedom of contract is a valued Texas policy, the legislature has expressed that judicial intervention is warranted and necessary for certain types of contracts. Tex. Fam. Code Ann. §§ 160.755, .756. TFC permits parties to enter surrogacy agreements freely, but a court must validate the agreement. Tex. Fam. Code Ann. § 160.754(a). The court considers several factors, including whether each party has voluntarily entered and understands the agreement. Tex. Fam. Code Ann.

§ 160.756(b). A court may choose to validate an agreement at its discretion, and an agreement that the court does not validate is unenforceable. Tex. Fam. Code Ann. §§ 160.756(d), .762(a).

Texas policy does not reflect no-holds-barred freedom of contract for parties entering agreements for procreation. Tex. Fam. Code Ann. §§ 160.756(b), (d), .762(a). Instead, the law demonstrates a clear and prescribed role for the judiciary. Tex. Fam. Code Ann. §§ 160.756(b), (d), .762(a). Given the sensitive subject matter, the legislature has deemed it necessary for courts to have the final say on whether a surrogacy agreement is valid and enforceable. J.A. at 18.

Reanna and Axel's agreement warrants the same judicial treatment as surrogacy agreements because the parties' makeup and the agreements' purposes are similar. For this reason, this Court should play a role in determining the enforceability of assisted reproduction agreements when a party changes its mind. *See* J.A. at 18–19 (finding the legislature's intent extends to this case). In both scenarios, the State has an interest in protecting vulnerable parties contracting for highly intimate, consequential subject matter: children.

The balancing-of-interests test provides the necessary judicial discretion for Reanna and Axel's dispute. This approach is also analytically similar to the court's validation of surrogacy agreements. *See Rooks*, 429 P.3d at 593–94 (listing the factors for the balancing-of-interests test); Tex. Fam. Code Ann. § 160.756(b). Both analyses consider the parties' conduct in reaching a procreative decision. *Rooks*, 429 P.3d at 594; Tex. Fam. Code Ann. § 160.756(b). Under the balancing-of-interests test, the

court considers whether either party has acted in bad faith to control the pre-embryos. *Rooks*, 429 P.3d at 594. Similarly, the court assesses whether the parties voluntarily entered and understood the surrogacy agreement, which includes considering any bad faith conduct by one party in obtaining the assent of another. Tex. Fam. Code Ann. § 160.756(b)(4). Additionally, both analyses consider the parties' physical ability to bear children and intent for entering the agreement. Tex. Fam. Code Ann. §§ 160.756(b)(2), (4), (5); *Rooks*, 429 P.3d at 593–94. Because of these similarities, applying the balancing-of-interests test to the parties' dispute is an appropriate expression and extension of legislative intent.

Meanwhile, applying the mutual contemporaneous consent approach here would be inconsistent with the legislature's intent for courts to settle disputes involving procreation affirmatively. Tex. Fam. Code Ann. §§ 160.755, .756. The parties have turned to this Court for a swift resolution of their dispute; the Court should not send them home without a remedy. *Rooks*, 429 P.3d at 592.

3. The *Roman* court's analysis of Texas policy should not extend to this case.

While the *Roman* court addressed current Texas law regarding surrogacy and assisted reproduction, its analysis was incomplete and did not provide a workable remedy for this dispute. *See Roman v. Roman*, 193 S.W.3d 40 (Tex. App.—Houston [1st Dist.] 2006, pet. denied), *cert. denied*, 552 U.S. 1258 (2008).

After a cursory review of the TFC provisions on surrogacy and assisted reproduction, *Roman* gleaned that the policy of this state would permit a husband and wife to enter an advance agreement that provides the disposition of pre-embryos

in the event of contingencies. *Roman*, 193 S.W.3d at 49–50; J.A. at 18. From this observation, the court jumped to the sweeping conclusion that enforcing such agreements would not violate Texas policy. *Roman*, 193 S.W.3d at 50; J.A. at 18. But a policy that permits an agreement to exist does not necessarily permit the enforcement of that agreement when a party changes its mind. In reaching its decision, the *Roman* court ignored the legislature's clear recognition of a party's change of heart in other agreements to procreate. Tex. Fam. Code Ann. §§ 160.706, .754(e), .759(a); J.A. at 18–19.

Further, the *Roman* court reconciled the risks associated with changes of heart with an inadequate solution. When a court chooses not to recognize a change of heart, it denies a party's present procreative interests and desires. *See Roman*, 193 S.W.3d at 45 (identifying the risks associated with enforcing an agreement that no longer reflects a party's desires). *Roman* noted the prevalence of provisions that permit parties to modify the terms of an assisted reproduction agreement with their mutual, written consent. *Id.* The court concluded that such provisions sufficiently protect parties from the risks associated with changes of heart. *Id.* But this type of provision only protects a party's change of heart when the other party feels the same way. It does not protect a party that has independently changed its mind.

Here, the parties' agreement contained a provision that allowed them to modify their agreement with joint, written consent. J.A. at 38. This provision bears no relevance to Reanna and Axel's dispute. If the parties could reach a mutual decision to modify their agreement, they would not be in court. J.A. at 19. For these reasons,

Roman's conclusions regarding Texas policy should not inform this Court's decision. J.A. at 18.

B. Applying the balancing-of-interests test when a party has a change of heart after entering an agreement requiring procreation would be consistent with precedent in most jurisdictions, including Texas.

Case law addressing IVF agreements demonstrates a preference for enforcing agreements that do not result in the creation of life and discomfort with enforcing agreements that would force one party to procreate against its will.

1. Courts generally do not enforce contracts that would force a party to procreate against its will.

In virtually every case that has applied the contractual approach, the effect of the parties' agreement was to discard the remaining pre-embryos or donate them to research in the event of divorce. *See, e.g.*, *Roman*, 193 S.W.3d at 42 (contract provided the pre-embryos shall be discarded); *Kass v. Kass*, 696 N.E.2d 174, 181 (N.Y. 1998) (contract provided the pre-embryos shall be donated to the IVF clinic's research program); *Bilbao*, 217 A.3d at 980 (contract provided the pre-embryos shall be discarded); *Litowitz v. Litowitz*, 48 P.3d 261, 264 (Wash. 2002) (contract provided the pre-embryos shall be discarded after five years); *Dahl v. Angle*, 194 P.3d 834, 836–38 (Or. Ct. App. 2008) (contract provided the wife was the decision-maker and her preference was to discard pre-embryos). Under these contracts' terms, neither party would become a parent against its will because the pre-embryos would never be implanted. *See, e.g.*, *Bilbao*, 217 A.3d at 980 (pre-embryos discarded by clinic).

Meanwhile, in jurisdictions that have applied the balancing-of-interests test, the effect of enforcing the parties' agreement was that one party would become a genetic or biological parent against their wishes. *See, e.g.*, *J.B.*, 783 A.2d at 717 (refusing to enforce an agreement that would force the wife to be a genetic parent against her will by donating the pre-embryos to another couple, applying the balancing-of-interests test instead); *A.Z. v. B.Z.*, 725 N.E.2d 1051, 1058 (Mass. 2000) (refusing to enforce an agreement that gave the wife sole custody of the pre-embryos because it would force the husband to become a biological father against his will, applying balancing-of-interests test instead); *McQueen v. Gadberry*, 507 S.W.3d 127, 147 (Mo. Ct. App. 2016) (refusing to enforce an agreement that would force the husband to become a biological father against his will by providing the wife sole custody of the pre-embryos). In these cases, one party had a change of heart since entering the agreement. *E.g.*, *J.B.*, 783 A.2d at 710. These holdings demonstrate a judicial discomfort with enforcing agreements that require a party to procreate in a manner that no longer reflects their will. *See, e.g.*, *id.* at 719 (holding IVF agreements are unenforceable when a party changes its mind). This hesitation makes sense, given that state and federal courts are bound to protect a person's constitutional right to avoid procreation. *See, e.g.*, *id.* at 715–16 (acknowledging the implication of parties' constitutional rights in procreation disputes).

Applying the balancing-of-interests test here, the Court would not force either party to procreate by blind enforcement of the informed consent form. Instead, the Court would weigh the parties' relative interests and desires before permitting or

denying further procreation. *See, e.g.*, *A.Z.*, 725 N.E.2d at 1058 (applying the balancing-of-interests test).

This case is complicated. A decision in favor of either party under the balancing-of-interests test could force procreation. Reanna may become a genetic parent to the pre-embryos donated to another couple, or Axel may become a biological parent to Reanna's children resulting from IVF. *See* J.A. at 10–11 (citing the parties' desired outcomes). That said, it is essential to distinguish process from results. Whether a court should compel one party to be a parent against its will under the balancing-of-interests test is a separate inquiry addressed by the second issue before this Court. But before the Court can address that question, it must first decide on the proper framework for reaching its result. Is it the blind enforcement of a contract or an impartial and judicious review of the parties' relative interests and desires? Process matters. In cases where enforcing the parties' agreement would result in forced procreation, the balancing-of-interests test is a fairer procedural pathway than the contractual approach.

2. Applying the mutual contemporaneous consent approach would be inconsistent with precedent.

Most courts have rejected the mutual contemporaneous consent approach. *See, e.g.*, *Rooks*, 429 P.3d at 589 (categorically rejecting the mutual contemporaneous consent approach). Courts consider this framework inadequate for resolving disputes because it is unrealistic and gives one party a de facto veto over the other party. *Id.* These downsides outweigh the approach's only benefit: it does not force a party to procreate against its will. That said, avoiding forced procreation may be little

consolation to parties who are forced instead into an indefinite gridlock under this approach.

The mutual contemporaneous consent approach would be an ineffective framework for resolving the parties' dispute. Reanna and Axel have not reached a mutual decision regarding the disposition of their remaining pre-embryos. J.A. at 8–9, 19. If the Court applies the mutual contemporaneous consent approach here, the pre-embryos will stay in the Center's custody until the parties reach a joint decision. J.A. at 9, 11. Axel will achieve his desired result of avoiding procreation with Reanna so long as the pre-embryos remain in the Center's storage. J.A. at 9, 11. He will effectively prevail because the passage of time serves his interests, not because the Court decided he should win on the merits of this case. *See Rooks*, 429 P.3d at 589 (explaining the problematic de facto veto power inherent to this approach).

II. In the alternative, this Court should affirm because courts apply the balancing-of-interests test absent an enforceable agreement governing the disposition of the parties' pre-embryos after divorce.

Even if the contractual approach is appropriate in some cases (it is not here), jurisdictions that have applied it concede that the balancing-of-interests test is the best approach when there is no enforceable contractual agreement. *Davis v. Davis*, 842 S.W.2d 588, 604 (Tenn. 1992). An agreement's enforceability depends on whether the parties mutually assented to it.

A. Courts do not enforce agreements that lack mutual assent.

Mutual assent is a key requirement of an enforceable agreement. *See, e.g.*, *In re Hawthorne Townhomes, L.P.*, 282 S.W.3d 131, 139 (Tex. App.—Dallas 2009, no

pet.). Courts will not enforce a contract without both parties' clear offer and acceptance. *See, e.g.*, *Roach v. Dickenson*, 50 S.W.3d 709, 713 (Tex. App.—Eastland 2001, no pet.).

1. Informed consent forms that lack mutual assent are unenforceable as binding agreements in disputes between IVF couples.

A court may enforce an informed consent form for IVF only if the form manifests the parties' intent to be bound. *Jocelyn P. v. Joshua P.*, 250 A.3d 373, 380–81 (Md. Ct. Spec. App. 2021). Courts have expressed doubts as to whether informed consent forms in this context demonstrate mutual assent for three reasons: (1) form contracts lack express direction from the progenitors, (2) concerns about timing as it relates to formation and enforceability, and (3) treating an informed consent form as a binding divorce agreement extends the scope of the form beyond the parties' intent. *See, e.g.*, *id.* (finding boilerplate language that lacked express direction from the progenitors would not qualify as an express agreement); *A.Z.*, 725 N.E.2d at 1056–57 (finding agreements that lack durational provisions fail to demonstrate the parties' mutual assent over time).

First, informed consent forms are often form contracts containing boilerplate language drafted by a third-party IVF clinic. *Jocelyn P.*, 250 A.3d at 380. Because the substance of these contracts often lacks express direction from the progenitors, some courts have declined to permit these agreements to govern disputes between the progenitors for lack of mutual assent. *Id.*

Second, courts have cited concerns about the timing of the parties' intent to be bound. *See, e.g.*, *A.Z.*, 725 N.E.2d at 1056–57 (questioning an informed consent form's enforceability over time). Couples may have little time to review lengthy informed consent forms before signing them. And even if couples had more time to review the forms, the inherent difficulty of predicting one's future responses to life-altering events, like parenthood or divorce, persists. *Witten*, 672 N.W.2d at 777, citing Carl H. Coleman, *Procreative Liberty and Contemporaneous Choice: An Inalienable Rights Approach to Frozen Embryo Disputes*, 84 Minn. L. Rev. 55, 88–89 (1999). Further, informed consent forms lacking durational provisions are dubious as to the parties' intent over time. *A.Z.*, 725 N.E.2d at 1056–57. Absent an explicit provision, courts are reluctant to assume that the parties intended for the form to govern the disposition of their pre-embryos several years after execution. *Id.* This is especially true when a fundamental change in the parties' relationship has occurred, such as divorce. *Id.*

Lastly, courts have considered who the parties assent to be bound to when signing an IVF informed consent form. *See, e.g.*, *A.Z.*, 725 N.E.2d at 1056–58 (finding the informed consent form unenforceable because the parties intended for it to regulate disputes only between the couple and clinic). In this context, the primary purpose of an informed consent form is to address the relationship between the medical facility and the IVF couple. *Witten*, 672 N.W.2d at 782–83. These agreements are drafted by and for the clinic to carry out its operations; they are not meant to serve as binding agreements between the progenitors separately. *A.Z.*, 725 N.E.2d at

1056. The progenitors assent to be bound by their commitments to the clinic but not to each other. *Id.* An informed consent form does not transform into a binding divorce agreement simply by garnering the parties' signatures. *See id.*; *see also Patel v. Patel*, No. CL16000156-00, 2017 WL 11453591, at *2 (Va. Cir. Ct. Sept. 7, 2017) (concluding the informed consent form did not create a contract between the IVF patient and her partner). Treating it as such extends the agreement beyond the scope of the parties' intent. *See A.Z.*, 725 N.E.2d at 1056.

Here, it is doubtful that Reanna and Axel mutually assented to the informed consent form's provisions for the future disposition of pre-embryos. The form contained only boilerplate language drafted by the Center. J.A. at 36–38. This form is like the form signed by the parties in *Jocelyn P. v. Joshua P.* 250 A.3d at 380–81. There, the court held that boilerplate language from a third-party clinic that lacked express direction from the progenitors would not qualify as an agreement regulating the couple's dispute. *Id.* Absent an enforceable agreement, the court concluded that the balancing-of-interests test was the appropriate framework to apply; this Court should reach the same conclusion. *Id.*

Further, timing is a concern here. Reanna and Axel did not have the time to review, digest, and discuss the nine informed consent forms they signed in the 20-minute visit before their first IVF procedure. J.A. at 7, 36–38. The question about pre-embryos' disposition in the event of divorce has six options alone, each with complex long-term ramifications. J.A. at 38. Additionally, the form does not include a duration clause providing how long the parties intend for the form to govern the

disposition of their pre-embryos. *See A.Z.*, 725 N.E.2d at 1056–57 (citing concerns about IVF agreements that lack duration clauses); J.A. at 36–38.

Lastly, by its terms, the primary purpose of the informed consent form is to protect the Center in its business relationship with the parties, not to serve as a binding agreement between Reanna and Axel. J.A. at 36–38. Most of the form's provisions limit the Center's liability, e.g., a release, an assumption of the risk, and a liquidated damages clause. J.A. at 37. The form is not expressly intended to operate as a binding dispositional agreement if the parties disagree. *See A.Z.*, 725 N.E.2d at 1056 (citing concerns about enforcing informed consent forms that lack the parties' express intent for the agreement to govern disputes between the couple); J.A. at 36–38.

And while Axel may argue that the informed consent form reflects his intent, his advance consideration of the form's divorce question is not imputed to Reanna. J.A. at 8. Further, the record shows that Axel did not share his thoughts with Reanna before or during the visit when the couple signed the form. J.A. at 8. These circumstances indicate a lack of mutual assent to the informed consent form.

For this reason, the Court should find the agreement unenforceable. Therefore, the balancing-of-interests approach is the appropriate legal framework for deciding this case. *See Davis*, 842 S.W.2d at 604 (finding courts should apply the balancing-of-interests test absent an enforceable agreement).

CONCLUSION

This Court's decision to affirm would ensure that Texans are protected, not punished, when they change their minds about procreation—in effect, when they act human. The balancing-of-interests test is the appropriate legal framework for deciding this case because it embodies principles codified in Texas law and is consistent with precedent. Even if the contractual approach is proper in some cases (it is not here), applying the balancing-of-interests test is necessary when the parties do not have an enforceable agreement. Reanna and Axel lack such an agreement. Either way, the balancing-of-interests approach best protects our citizens' procreative interests.

CERTIFICATE OF COMPLIANCE WITH RULE 3.02(e)

This brief complies with the type-volume limitation of Rule 3.02(e) because it contains 5,411 words, excluding the parts of the brief exempted by that Rule.

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BA/BS From	**University of San Diego**
Date of BA/BS	**May 2020**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 4, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Michigan Journal of International Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Daugirdas, Kristina
kdaugir@umich.edu
734-763-2221
Carr, Bridgette
carrb@umich.edu
734-764-4147
Kantor, Allyn
adavidk@umich.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jordane Schooley
731 Watersedge Drive, Ann Arbor, MI 48105
(805) 796-7421 • sjordane@umich.edu
she/her/hers

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School writing to apply for a clerkship in your chambers for the 2024–2025 term or your next available term. I am deeply dedicated to human and civil rights work and seek to gain invaluable litigation skills through clerking.

My passion for writing developed during my four years as a writing tutor at my undergraduate writing center. I cultivated my ability to communicate feedback in a constructive and supportive manner. The experience inspired me to author an honors thesis exploring women's roles in the workplace. I continued to strengthen my ability to write complex ideas in a clear and compelling manner in law school by writing a note on state interpretation of Article 16 of the Convention Against Torture. In my summer internship at the Human Trafficking Clinic, I conducted extensive research, synthesized information, and produced high-quality written work under tight deadlines to assist victims of human trafficking. As a student committed to public interest, I also utilized my writing skills for my pro bono work. At the Syrian Accountability Project, I assessed and explained why documented killings and bombings met the legal criteria to constitute war crimes under the Rome Statute.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following professors are included in my application:
· Professor Kristina Daugirdas: kdaugir@umich.edu, (734) 647-3729
· Professor Allyn Kantor: adavidk@umich.edu, (734) 647-2029
· Professor Bridgette Carr: carrb@umich.edu, (734) 615-3600

Thank you for your time and consideration.

Respectfully,

Jordane Schooley

Jordane Schooley

731 Watersedge Drive, Ann Arbor, MI 48105
(805) 796-7421 • sjordane@umich.edu
she/her/hers

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor — Expected May 2024
Journal: Michigan Journal of International Law, Contributing Editor, Volume 45
Honors: John Paul Stevens Fellowship, Dean's Scholarship, Equal Justice America Fellowship
Activities: International Law Society (Treasurer)
Oral Advocacy Competition

UNIVERSITY OF SAN DIEGO — San Diego, CA
Bachelor of Arts in Sociology, concentration in Social Justice, *magna cum laude* — May 2020
Honors: Phi Beta Kappa; Honors Program; Dean's List; Departmental Honors; Writing Center Award
Study Abroad: University of Edinburgh, Edinburgh, Scotland
Auckland Institute of Technology, Auckland, New Zealand
University of San Diego, Tokyo, Japan

EXPERIENCE

INVESTOR ADVOCATES FOR SOCIAL JUSTICE — Montclair, New Jersey (Position is Remote)
Human Rights and Shareholder Advocacy Legal Intern — May 2023-August 2023

UNITED NATIONS HUMAN RIGHTS COUNCIL — Geneva, Switzerland (Position is Remote)
Student Legal Advisor, Part Time Externship through INHR — September 2022 – May 2023

- Served as a legal advisor to Malawi and Special Rapporteur on Free Assembly and Association for the 51st and 52nd Session of the United Nations Human Rights Council
- Drafted background legal research for Special Rapporteur on accountability mechanisms for violations; analyzed Universal Periodic Reviews on human rights and wrote summaries for delegations to make recommendations

UNIVERSITY OF MICHIGAN HUMAN TRAFFICKING CLINIC — Ann Arbor, MI
Summer Student Attorney — May 2022 – August 2022

- Assisted human trafficking victims in obtaining T-visa immigrant status through direct client communication
- Produced legal memos and research for an asylum application and a response to USCIS Request for Evidence

COUNCIL ON AMERICAN-ISLAMIC RELATIONS — Washington, D.C.
Civil Rights Legal Intern — August 2020 – July 2021

- Processed complaints, conducted client intake interviews, drafted formal charges, and wrote FOIA requests
- Composed fact sections for prisoners' rights, immigration delays, workplace discrimination, and terrorist watchlist litigation

THE IMMIGRATION JUSTICE PROJECT — San Diego, CA
Legal Researcher — Jan 2019-August 2019

- Researched international sources to compose country condition reports used for asylum cases

ADDITIONAL

Languages: French (fluent)
Pro Bono: Documented war crimes with the Syrian Accountability Project (2021-current); Created country condition report with International Refugee Assistance Project (2021-current; Co-President)
Interests: Watching Audrey Hepburn films; Playing classical piano—Debussy, Liszt, Rachmaninoff, Chopin

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Schooley,Jordane
Student#: 79505196

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021	**(August 30, 2021 To December 17, 2021)**							
LAW	510	001	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	B
LAW	520	001	Contracts	John Pottow	4.00	4.00	4.00	B
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	B
LAW	593	001	Legal Practice Skills I	Howard Bromberg	2.00		2.00	S
LAW	598	001	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	S
Term Total				**GPA: 3.000**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.000**		**12.00**	**15.00**	
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	530	001	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	B+
LAW	540	002	Introduction to Constitutional Law	Evan Caminker	4.00	4.00	4.00	B-
LAW	594	001	Legal Practice Skills II	Howard Bromberg	2.00		2.00	S
LAW	630	001	International Law	Gregory Fox	3.00	3.00	3.00	B+
Term Total				**GPA: 3.081**	**13.00**	**11.00**	**13.00**	
Cumulative Total				**GPA: 3.039**		**23.00**	**28.00**	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Schooley,Jordane
Student#: 79505196

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2022	**(August 29, 2022 To December 16, 2022)**							
LAW	693	001	Jurisdiction and Choice Of Law	Mathias Reimann	4.00	4.00	4.00	B
LAW	756	001	Comparative Human Rights Law	John McCrudden	3.00	3.00	3.00	B+
LAW	791	002	Environmental Crimes	Michael Fisher Warren Harrell	3.00	3.00	3.00	B
LAW	836	001	The United Nations	Kristina Daugirdas	2.00	2.00	2.00	A-
LAW	986	801	INHR Virtual Internship Sem	Eric Richardson	1.00		1.00	S
Term Total				**GPA: 3.191**	**13.00**	**12.00**	**13.00**	
Cumulative Total				**GPA: 3.091**		**35.00**	**41.00**	
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
LAW	612	001	Alternative Dispute Resolution	Allyn Kantor	3.00	3.00	3.00	A-
LAW	716	001	Complex Litigation	Michael Leffel	4.00	4.00	4.00	A-
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A-
LAW	838	001	Law of Armed Conflict	Joshua Chinsky	2.00	2.00	2.00	A
LAW	987	801	INHR Virtual Internship	Eric Richardson	3.00		3.00	S
Term Total				**GPA: 3.750**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.259**		**47.00**	**56.00**	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Schooley,Jordane
Student#: 79505196

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:	05/30/2023							
LAW	406	001	Real Estate Transactions	John Cameron Jr	2.00			
LAW	490	001	Family Law Practicum	Tracy Van den Bergh	3.00			
LAW	642	001	Mass Incarceration	Roscoe Jones Jr	1.00			
LAW	669	001	Evidence	Richard Friedman	4.00			
LAW	685	001	Design Fulfilling Life in Law	Bridgette Carr Vivek Sankaran	2.00			
LAW	980	308	Advanced Clinical Law	Bridgette Carr	1.00			

End of Transcript
Total Number of Pages 3

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